

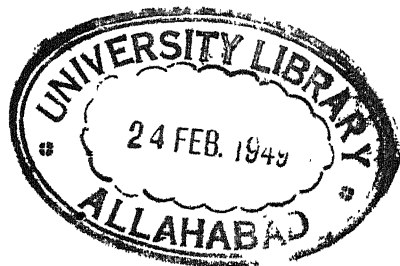
# Road and Rail

*an enquiry into the economics  
of competition and state control*

*by*

Gilbert Walker, M.A., D.Litt.

*Reader in Economics, University of Birmingham ;  
sometime Senior Webb Medley Scholar, Oxford University;  
and Madden Prizeman, Trinity College, Dublin.*



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*To all those traders, road hauliers, and  
railway servants who, unwittingly perhaps,  
contributed to the education of an economist.*



## Foreword

THIS book was planned and written as a contribution to an urgent contemporary problem, the competition between rail and road in the decade before the outbreak of war in 1939. The first impression, published in 1942, was soon out of print and a second edition was undertaken in anticipation of nationalisation as soon as the paper could be secured. The first eleven chapters were already in page proof when the Transport Bill was issued. Much time would inevitably have been lost had an attempt been made to recast the earlier part at so late a date. The delay did not appear justified particularly since the Acts now governing rail and road carriers and the precedents of the Courts responsible for their administration remain good law until the Transport Commission is established and has begun its operations. In revising the text, I have accordingly expressed in the past tense only those phenomena which might not have survived the War and reconversion. I have retained the present tense in dealing with the rights and duties of carriers under the Railways Act of 1921, those portions of earlier Acts which prohibited undue preference and the Road and Rail Act of 1933.

A surgical operation, however painful to the patient at the time, is soon forgotten once its success is assured. The same, no doubt, will be true of the severe handling to which railway stockholders and road hauliers are to be subjected. The Transport Bill will finally be judged not by the equity or otherwise of the compensation offered to the present owners, but by the manner in which the Transport Commission, the Executives and the Transport Tribunal resolve the economic problems which it is the main purpose of this book to describe. The Bill is silent upon all questions of policy. The authority of the Commission and Transport Tribunal is conceived on a scale which is as grand as its limits are indefinite—and the decisions of both may be overridden by departmental fiat exercised through the rights of direction reserved for the Minister. How these powers will be interpreted we do not yet know, nor shall we till sufficient time has elapsed for rules to be made and precedents established, an administrative and legal process which may occupy years rather than months. In the meantime, there is to be one executive responsible for the

administration of railways and one for operating road transport services. The railway executive can no doubt enter immediately upon the unencumbered possession of its properties. But the road transport executive will govern an industry part of which, on the long distance side, may remain in the hands of its private owners for a more or less prolonged period depending upon the time taken to arrange for the transfer to the public, of 2,000 or more individual enterprises and upon the use which the Licensing Authorities and Commission make of their discretion to permit private and public carriers to work beyond the prescribed limits. History may not repeat itself but like circumstances inevitably produce like results and a study of the relationships which existed before the war between Government departments, traders, railways and road hauliers appears the obvious and best starting point for the discussion of future developments.

The work is based on material collected mainly by a direct canvass of road hauliers, traders and transport managers and railway servants in Birmingham and the neighbouring towns. Although the bulk of the information relates to traffic between Birmingham and London, Liverpool and Manchester, sample enquiries elsewhere showed that traffic and transport on the roads and railways connecting the Midlands with London and Southern Lancashire exhibited conditions typical of the whole country. For my information about truck and railroad competition in the United States of America I have relied upon the works of well-known American authorities and in addition made extensive use of the reports issued by the Federal Transport Co-ordinator (the late Mr. J. B. Eastman) and by the Interstate Commerce Commission. These pieces of descriptive writing about economic phenomena deserve the highest praise, both for clarity and for comprehension. I can only wish that British departments and Tribunals would follow so excellent an example and document their decisions with the same thoroughness and care.

No contribution has been made toward the history of inland transport during the war of 1939-1945. Wartime experience is a chapter entirely by itself and is being handled far more competently by the official historians who have the additional advantage of access to the original sources. It is to be hoped, however, that the Ministry will make its history available to the public in the fullest possible detail. Readers of the first edition

will realise only too well how much the discussion of transport problems is handicapped by the lack of reliable and significant data, statistical and otherwise, particularly on the road side. The Area Traffic Commissioners compiled some interesting and useful statistics of bus traffics—passenger journeys receipts, and so on ; but the licensing authorities produced nothing except some uninformative figures of the number of vehicles registered and their distribution among the different classes of licensees. The transport of freight presents a most awkward economic problem and the fact that in the case of one of the principal competitors we know nothing at all about the quantities involved adds immeasurably to the difficulties of arriving at a sensible resolution.

I must acknowledge in the second edition, as much as in the first, the help given by the many traders, road hauliers, railway servants and public officials, who supplied me so liberally with the information upon which this work is based. I owe a debt of gratitude to my academic superiors, Professor J. G. Smith and Professor P. Sargant Florence, and I must thank Professor D. Philip Lochlin of the University of Illinois and other American friends for kindly criticism of the chapters which deal with transatlantic experience. Finally, I am once more obliged to the editors of the *Economic Journal*, *The Modern Law Review*, *The Economist*, the *Manchester Guardian* and the *Journal of Political Economy* (University of Chicago Press) for permission to incorporate material which has already appeared in their columns, although in another form.

G.J.W.

*Faculty of Commerce and Social Science,  
University of Birmingham.  
March, 1947.*



# Contents

	PAGE
Foreword	7
CHAPTER I	
General	
1 <i>Comparison of economic and physical structure</i>	19
2 <i>Railways large monopolised businesses, and therefore controlled; road hauliers are many, small and competitive, and have been left free</i>	21
3 <i>Comparison of annual expenditure on highways and receipts of motor taxation shows that long-distance carriers were paying a "fair" share of the costs of road upkeep</i>	28
CHAPTER II	
Railway Rates and Charges	
1 <i>Railway rates discriminate, and this discrimination depends in part upon the conditions of sale</i>	36
2 <i>Classification of goods, history, and present practice</i>	42
3 <i>Standard Rates adjusted to revenue and must be charged. Wagon hire, cartage charges, owner's risk rates, and private siding agreements</i>	52
4 <i>Exceptional Rates; the terms upon which rates lower than Standard may be granted. Control by the Tribunal no bar to the grant of such rates. Exceptional Rates given for many reasons other than road competition</i>	67
5 <i>Disintegration of Exceptional Rates</i>	74
6 <i>Undue preference prohibited by law. Railways required to treat impartially all traders consigning similar and competitive merchandise in like circumstances. Matters which justify a preference</i>	75
7 <i>Agreed Charges. The Robinson Case. Conditions under which agreements are negotiated. Assessment of charge. What railway and trader gain</i>	82
8 <i>Offered Charges</i>	92

## CHAPTER III

PAGE

## Road Charges

*Charges by road determined in a competitive market on the basis of cost plus profit. All hauliers do not make the same charge; nor do they offer the same service. Secrecy and good-will important causes of variation in rates. The cost of conveying goods varies and traders require different facilities. Back-loads at low rates partly caused by defective clearing system and partly an inevitable characteristic. Freight clearing houses*

94

## CHAPTER IV

Competition Between Road and Rail  
in the years before the War (1939).

- 1 Rates. *Road charges the lower for valuable goods, rail for the cheaper merchandise. Road hauliers work only the dense traffic routes and carry the larger consignments. Light traffic routes and the smaller loads remain to the railway. The special case of "smalls" traffic. Road transport competes for traffic for which costs of carriage are low in relation to railway rate* 107
- 2 Service. *Road transport and the railway compete also in service. Reasons commonly advanced by traders for preferring one service to the other* 115
- 3 Private fleets. *Advantages a trader secures by the operation of his own fleet measured by service more than cost. A private carrier's costs less than those of the public haulier only in limited circumstances* 121

## CHAPTER V

## Effects of Competition on Rail Traffic and Rates

- 1 *Traffic by rail lost heavily in proportion to output* 124
- 2 *And there was no great reduction of railway rates* 129



## CHAPTER VI

PAGE

## Hindrances to Rate Reduction

*Reductions of rate often made unnecessary by differences of service. But reductions to meet road competition impeded (a) by the law of undue preference, (b) by publicity of rates and (c) by the great size of railway companies. Two prices for transport established and, owing to restriction of road transport, two prices might have continued indefinitely. Procedure when a rate is to be reduced*

132

## CHAPTER VII

## Economic Consequences of the Road and Rail Traffic Act, 1933, Part I

1 *Statutory conditions under which licences were issued* 143

2 *Licences granted only if "suitable transport facilities" were not to be had. What must be proved by a new entrant, by an established haulier wishing to expand his fleet, and by one who applied for a renewal of licence* 147

*Appendix. Hiring; back-loads; purchase of a licencee's business; railway companies as public carriers* 152

3 *Suitable facilities exceeding requirements against the public interest. Lack of information at disposal of Authorities and Tribunal. Public need proved by inconvenience. A licence justified only by new business. Licences not issued because road charges were lower, or could be reduced. Act and Tribunal restricting enterprise in a trade where conditions were particularly favourable. The chief losers, first the public, and next, the haulage contractors* 154

*Appendix. Cases cited* 166

## CHAPTER VIII

## The Penalty of Bigness

1 *Large transport undertakings the more economical to operate, can provide the better through working and the more comprehensive service* 172

The Penalty of Bigness—*continued*

PAGE

- 2 *Railway companies hampered in competition with small road hauliers, not by legal restraint, but by large-scale organisation combined with publicity of rates. Small railway companies might be in a stronger position to compete. Large organisation has administrative disadvantages and the railways are statutory carriers. Road hauliers may be common carriers, but the obligations of this status are less onerous. Obligation to carry a hardship only if rates not remunerative. Railway rates such that road can concentrate on the traffic which is cheap to carry and leave the railway with the more expensive* 175

## CHAPTER IX

## Trans-Atlantic Comparison

- 1 *The size of the United States transport system. The constitutional complication. Inter and intra-state traffic. Conflict of jurisdiction between Federal and State authorities* 184
- 2 *Powers of the I.C.C. The Consolidated Classification. The Class Rate Investigation of 1939* 189
- 3 *State control of road transport* 195
- 4 *The Transportation Act of 1920. Valuation and the 'fair' return* 198
- 5 *Railroad consolidation* 203
- 6 *Rail and road carriers in boom and depression. The Emergency Rail Transportation Act of 1933* 205

## CHAPTER X

## Federal Motor Carrier Act of 1935

- 1 *The provisions of the Act. Certificates and permits. Restriction in U.S.A. apparently less severe than in Britain* 211
- 2 *The control of motor freight rates. The two conflicting principles of cost and value prescribed respectively in New England and elsewhere* 215
- 3 *Railway rates and road charges* 220
- 4 *Similarities and differences between conditions on the two sides of the Atlantic* 222

CHAPTER XI

	PAGE
The Decline of Private Ownership	
1 <i>British railway companies amalgamated into four systems intended to be of equal earning power</i>	227
2 <i>Summary of war time experience in U.S. and U.K.</i>	229
3 <i>Proposals for voluntary co-ordination in U.K.</i>	231

CHAPTER XII

The Transport Bill	237
Envoi 1947	250
Appendix	
(i) On the interpretation of cost	256
(ii) On the statistical requirements	258
(iii) Road Statistics	263, 264, 265
(iv) Selected Railway Statistics	
of U.K.	267
of U.S.A.	269
Index	271
Diagrams	<i>facing page 282</i>



# List of Tables

TABLE	PAGE
1 Traffic conveyed by rail, road, coastwise, and <sup>d</sup> canal	20
2 Distribution of vehicles	24, 25
3 Costs of road upkeep and receipts of Motor Taxation	31-33
Specimen page of General Railway Classification	41
Sample list of articles in General Railway Classification	43, 44
Early canal and railway classifications	45
Classification of brass and copper	49
Classification of metal in ingots	50
Classification of cotton and silk textiles	50
Classification of citrus peel	51
Classification of petroleum jelly	51
Schedule of standard charges approved by Railway Rates Tribunal	53
5 Basis of scales of standard charges	57, 58
Standard rates, diagram	60
6 Standard rates, shillings per ton	61
7 Standard rates, pence per ton-mile	62
8 Cartage charges	65
Proportion of traffic at exceptional rates	68
9 Tonnage of output and railway traffic	125
10 Estimated loss of rail-borne traffic	128
11 Average receipts per ton, and average length of haul, 1924-37	129

TABLE	PAGE
12 Average receipts per ton, etc.	130
13 Proportionate reduction, standard rate for Class 7 compared with higher class rates, at 80 miles	131
14 Percentage of traffic at exceptional rates, one week in March	131
15 Goods transport industry—number of licences and vehicles operated	164
Cases cited, heard before Road and Rail Traffic Appeal Tribunal	166
16 Ownership of vehicles in U.S.A., Fall 1941	186
17 Distribution of traffic and revenues between class, exception, and commodity rates, U.S.A. 1942	191
18 Distribution of traffic the between theseveralag encies, U.S.A. 1929 and 1932	207
Road statistics	263, 264, 265
Extracts from annual returns of railway capital, receipts and working expenditure	267
Selected Statistics of U.S. Steam Railroads	269

## CHAPTER I

### General

#### SECTION I

##### *Comparison of economic and physical structure*

Goods in Great Britain are carried by four services—rail, road motor vehicle, canal, and coastwise. The four are not comparable in size, measured by the traffic each conveys. The railways are the largest and road transport second. Canal and coastwise are relatively small.

Tonnage of rail-borne freight and of traffic carried by canal and coastwise is recorded, but no figures are available of road tonnage. The only published information is the number of vehicles and their unladen weight—data only remotely connected with volume of traffic carried. From other sources it may be assumed as a guess that immediately before the war (1939) traffic, other than local, conveyed by road in competition with rail, was of the order of 100 million tons.

Competition between road and rail is, for the most part, competition for the transport of "general merchandise." The railway has all but a monopoly of traffic in coal, minerals, and heavy freight. In Great Britain, traffic in general merchandise is a traffic of small consignments, all of them less than a wagon load, conveyed for short distances. The average length of haul for general merchandise is just over 100 miles. Traders ask for overnight delivery, and ship their merchandise in small parcels; and both railways and road hauliers must give this service. Sure of rapid and prompt deliveries, goods can be ordered to satisfy immediate requirements only, and merchants need keep but little stock on shelves or in store rooms. This relieves the trader from the burden of heavy stock, but makes difficult economical working of the transport service. It saves the trader at the expense of the transport undertakings. This situation does not arise in other countries. In the United States of America the unit of loading is the car-load, which may be anything from 15 to 30 tons. Less

than car-load freight pays much higher rates, and small parcels are not accepted at all. This traffic is collected from the several consignors by express companies and freight forwarders and made up into car-loads for rail transit. Distances in America are generally too great to allow of overnight delivery but American railways make no attempt to give this service even for short distances.

These characteristics of the traffic for which road and rail are competing, small parcels and short distances, may be set side

TABLE I  
TRAFFIC CONVEYED BY RAIL, ROAD, COASTWISE, AND CANAL,  
YEAR 1936

	Tonnage ooo tons
Rail .. ..	280,712
whereof coal ..	177,514
Road .. ..	100,000
whereof coal ..	negligible
Coastwise .. ..	38,000
whereof coal ..	23,700
Canal <sup>1</sup> .. ..	14,236
whereof coal ..	6,737

SOURCES: *Rail and canal traffic*: Returns of the capital, traffic receipts, and working expenditure, etc., of railway companies of Great Britain.

*Road*: Author's own estimate. See below, Chapter V.

*Coastwise*: *Fact Finding Committee of the Chamber of Shipping*, 1938.

by side with certain fundamental features of physical and economic structure. A railway requires heavy capital investment in fixed plant. Once laid down, the railway can deal with a great increase of traffic at relatively little extra cost. Rail-borne traffic is confined of course to its own permanent way. To tranship freight, to make up trains or to break them once made, are costly operations. A road contracting business requires little original outlay. Lorries, insurance, and licence can all be paid

<sup>1</sup> Excluding Manchester Ship Canal.



for in instalments. The lorry can go wherever there is a road; it can be taken from one service and put on another, or diverted on special occasions to serve special needs. But a lorry cannot convey more than a lorry-load and increase of traffic means more lorries.

Unlike a railway, capital expenditure on a road service increases directly with every increase of traffic. These differences suggest that small consignments requiring quick transit shipped to diverse destinations should go by road so as to avoid the heavy expenses involved for collection, delivery, transshipment and switching if conveyed by rail. Bulk traffic and train-loads of merchandise between industrial areas should go by rail, and also the truck-loads of coal, minerals, and heavy merchandise which do not need immediate delivery, since stocks are normally large. The road haulier could usefully act as feeder of the railway, collecting traffic over a wide area and delivering the parcels and lighter traffic from the rail-head.

Such would appear to be the rational and economic division of function between road and rail, indicated alike by physical conditions and economic structure. Investigation, however, showed that a distribution of traffic had grown up which was the opposite of this. It is the object of this study to show how this had come about, how it was that road transport was being used to convey the bulk consignments and running services where traffic was regular and dense; while the railway was carrying the small parcels and operating services where traffic was light and full loading uncertain.

## SECTION 2

*Railways large monopolised businesses, and therefore controlled; road hauliers are many, small and competitive and have been left free.*

The railways of this country are worked by four statutory undertakings, twelve subsidiary joint committees, the London Passenger Transport Board and twenty-one independent companies. These last are very small and twelve operate only light railways.

The four amalgamated companies were formed under Part I of the Railways Act of 1921. That Part of the Act required the

railway companies of the time—there were about one hundred and twenty—to combine into four groups. The First Schedule of the Act specified the constituent companies in each group and the subsidiary companies which each should absorb. The Act fixed a time limit and, with two exceptions, the amalgamations were completed within the time allowed.

Both the business and the operating practice of railway companies are closely regulated by law. Railway net revenue is limited by statute. The principles upon which railway rates may be constructed are laid down in Acts of Parliament; the actual rates which may be charged upon any traffic are subject to review by statutory bodies, and the relationship which one rate may bear to another is controlled both by statute and by judicial decision. Rates once fixed can be changed only if notice is given and permission obtained from an official Tribunal. The rates actually being charged must be made public and rates books kept open for inspection by interested parties, among whom are included competing transport concerns. Such detailed control is not peculiar to this country. Railways everywhere are similarly regulated and in some countries, the United States of America for example, the control is stricter than it is here.

This control is the outcome of legislation extending back to the earliest years of railways. Not all the measures have been imposed from outside or by the State. In some, notably the classification and the scales of rates and charges, the State has done little more than enforce by statute a system devised by the railway managements. The regulations are historical in origin—but the need for them is rooted in certain economic conditions of the transport market which have not yet entirely disappeared. The predecessors of the railway, the carriers by pack-horse, stage wagon and waterway, had their rates fixed by Justices of the Peace in Quarter Sessions<sup>1</sup> and fines were levied on those who charged more. Supervision of prices was in keeping with the custom of the age: it was exercised over many trades, often spasmodically and usually ineffectively. In the late eighteenth and early nineteenth centuries, economic statesmanship began to look less to regulation and more to competition between individual producers to ensure that the consumer obtained the commodities and services he required at a reasonable price. The

<sup>1</sup> See Jackman, *History of Inland Transportation*, Vol. II, p. 140.

first railway companies rapidly established their superiority over wagoner and canal as carriers of freight and, apart from coastwise shipping soon became the only important means of inland transport. As the century wore on, two points became clear. One was that the amalgamation of railway companies could not be entirely prevented nor indeed was it desirable to prohibit consolidation in the interests of efficient operation and good through working. The other was that the competition between the companies which remained after the inevitable amalgamations had taken place, did not promote the public interest. From the first, traders complained of unequal treatment and inadequate facilities and later on of exorbitant charges. Parliament and public opinion were forced by events to recognize that railways must be treated as monopolies. The first general Acts controlling railways were passed as early as 1845 and 1854 but regulation did not become effective till the last decade of the century. The law was not adequately enforced until the Railway and Canal Commission was strengthened and made permanent by the Railway and Canal Traffic Act of 1888. The final step of combining the companies into a very few monopolized organizations was not taken till 1921, upon the return of the railways to the control of their shareholders after the period of Government operation during the war of 1914-18. Even now, no one of the amalgamated companies can claim a complete monopoly of the railway traffic in its area. Branches from one amalgamated company extend into the area of another and, more important, the territorial boundaries of the companies are the routes of heaviest traffic.

The road transport business is quite unlike the railways. The number of independent operators is very large. Most vehicles are not owned by contractors, that is, public carriers, but by private carriers, traders who do their own carrying and take traffic for no one else. A return issued by the Ministry of Transport shows the number of operators and the number of vehicles owned by each. The majority own and operate very few vehicles.

A delivery round or the cartage of goods from one point to another in the same town, is not a service which comes within the function of rail transport, though the companies do undertake business of this sort. Road services properly competitive with rail are those carrying traffic for longer distances, between towns

and within industrial districts. But how many operators are competing directly with the railway is not known.<sup>1</sup> The returns did not distinguish between operators or vehicles working the one service or the other. The number of vehicles carrying traffic

TABLE 2.

*Distribution of vehicles, April, 1936.*

A. Vehicles operated by contractors holding public carriers' "A" licences. Vehicles specified on "A" licences.

B. Vehicles operated by contractors holding limited carriers' "B" licences. Vehicles specified on "B" licences.

Column 1. Number of vehicles operated by each firm.

Column 2. Total number of vehicles operated by those firms.

Column 3. Proportion to total vehicles licensed on "A" or "B" licences.

## A.

1				2	3
					%
1	..	..	..	14,060	17.3
2	..	..	..	9,986	12.3
3	..	..	..	7,368	9.0
4	..	..	..	5,708	7.0
1-4	..	..	..	37,122	45.6
5-9	..	..	..	14,615	18.0
10-14	..	..	..	6,525	7.9
15-19	..	..	..	4,181	5.2
20-24	..	..	..	2,736	3.3
1-24	..	..	..	65,179	80.0
24-49	..	..	..	6,679	8.2
50-74	..	..	..	2,241	2.8
75-99	..	..	..	1,333	1.6
1-99	..	..	..	75,432	92.6
100 and over	..	..	..	5,999	7.4
				81,431	100.0

<sup>1</sup> The Road Haulage Organisation, an agency of the Ministry of War Transport established in 1943 in order to operate all long distance services on behalf of the Government, will presumably have compiled the relevant statistics but this information has not yet been released.

which might otherwise go by rail cannot have been large. The smallest lorry commonly used on a regular long-distance service is one of 50 cwt. unladen weight. Less than a quarter of all commercial vehicles are as heavy as this. The number of lorries exceeding two tons in unladen weight—the lower limit must be taken to include all vehicles in the 50-cwt. taxation class—was 135,300 out of a total of 441,100 in 1936, rising from 72,000 in 1931 and 100,000 in 1934, the year in which the system of licensing carriers was instituted, and the duties on heavy vehicles raised.

Not all of these 135,000 heavy lorries were engaged upon long-distance services. Some at least will have been worked by local haulage contractors, by master builders, builders' merchants, house wreckers, local authorities, brewers, and the many other tradesmen who require a heavy lorry for local purposes. Equally, there will have been some long-distance services worked by vehicles of two tons or less. The addition of the latter would

## B.

1	2	3
		%
1 .. ..	25,661	48.6
2 .. ..	9,838	18.6
3 .. ..	4,859	9.2
4 .. ..	2,772	5.3
1-4 .. ..	43,130	81.7
5-9 .. ..	5,168	9.7
10-14 .. ..	1,616	3.3
15-19 .. ..	1,070	2.0
20-24 .. ..	453	0.8
1-24 .. ..	51,437	97.5
25 and over .. ..	1,362	2.5
	52,799	100.0

SOURCE: Statistical information relating to goods vehicles authorised under carriers' licences at the 30th April, 1936, Ministry of Transport. (No more recent data have been published).

Note.—For explanation of the terms "public carriers' 'A' licence" and "limited carriers' 'B' licence," see below, Chapter VII.

hardly offset entirely the deduction of the former. It can therefore be assumed that the number of lorries being used to carry traffic in competition with the railway, both by public carriers and by private firms who were not themselves haulage contractors, was not greater than the total taxed at 50 cwt. or over. It is probably not unreasonable to put the number of vehicles actively and regularly engaged on such work at about 110-120,000. By contrast, the railways own 650,000 trucks and wagons and private owners have as many more.

There are very many hauliers and each competes actively with his fellows. To borrow a term from Professor Pigou, competition between hauliers is "simple," since the output of each—the traffic each can carry—is a small proportion of the total conveyed by all. But though simple, competition is neither "perfect" nor "pure," as those conditions are understood by Mrs. Joan Robinson and Professor E. H. Chamberlin.<sup>1</sup> Entry to the trade is restricted; the service provided varies considerably from one haulier to another; good-will is important to each operator's business and each keeps secret the details of his charges and his freights.

In industries in which concerns are small and competition active, the determination of prices and the provision of facilities can be left to the individual suppliers themselves. Competition between producers serves to protect the interests of the public, to ensure adequate service at a reasonable price and equal treatment for all consumers. In a market in which many small firms are competing with each other, a consumer who is aggrieved by one supplier is free to transfer his custom to another whose charges seem more reasonable or whose service and methods of business please him better. The customer of a monopoly or one who deals with monopolised business, has no such resource. There is no other supplier to whom he can turn. If a supplier or combination of suppliers abuse their position, the consumer has no remedy unless and until he can call the State to his aid. Road haulage rates and charges are free from legal regulation because control has not so far been necessary. Competition within the road transport business has been as effective in protecting the consumer against exorbitant prices, arbitrary inequity and inferior service as it is in any other normally competitive trade.

<sup>1</sup> Robinson, *Economics of Imperfect Competition*; Chamberlin, *Theory of Monopolist Competition*.

Railways, it was feared in the past, being monopolies, would be able to charge unreasonably high rates if left to their own devices. Public authorities have been given power to determine maximum rates to guard against such exactions. In the road haulage business, the opposite is the main ground of complaint, that there is too much competition and rates are "uneconomically" low. Control, where imposed at all, has been intended not to preserve the trader against extortion, but to protect the hauliers from each other. As the Salter Conference on Road and Rail put in its Report: "Any individual at present has an unlimited right to enter the haulage industry. . . . He . . . is often tempted to force his way in by offering rates which are completely unremunerative and necessarily lead to a bankruptcy which, nevertheless, does not discourage others—or perhaps even himself—from following the same course in a *perpetual* succession."<sup>1</sup> In the United States of America, the control of transport rates has been carried very much further than in this country.<sup>2</sup> There the Interstate Commerce Commission and often the State railroad or public service commissions have the power to fix maximum *and minimum* rates for road haulage.

Though free to determine their own rates and charges, road transport operators do not entirely escape the burden of legal control. There is statutory control over the mechanical fitness of motor vehicles—lorries are examined periodically. The hours which a driver may work are limited. No man may drive for more than 5½ hours continuously without a break of half an hour; and no driver may work for more than two consecutive spells of 5½ hours without resting for ten hours away from the lorry. The control of working hours is a responsibility of both sides. It depends upon records which drivers themselves are required to keep, the "log-sheet," reinforced by intermittent checks on the road by the officers of the Licensing Authority. A recent Act, the Road Haulage Wages Act, 1938, has set up a scheme for the statutory determination of the wages of drivers and mates.

The form of control which has been most effective and most vigorously applied to road transport is restriction of the numbers of vehicles which contractors may operate. By authority of Part I of the Road and Rail Traffic Act of 1933, no lorry may be

<sup>1</sup> *Report*, p. 30. Author's italics.

<sup>2</sup> See below Chapters IX and X.

used to carry goods except under licence. Licences are not issued without limit and an application will fail if some other carrier, by road or rail, is already providing "suitable transport facilities." Road hauliers cannot therefore take all the traffic which could be carried more cheaply by road but only that portion which is within the capacity of licensed vehicles. Limitation of the volume of traffic which road contractors can carry is an inequity parallel to that of which the railways have complained, that railway rates are controlled and road charges are not. The restrictions differ but each is as complete a denial of "commercial freedom" as the other.

### SECTION 3

*Comparison of annual expenditure on highways and receipts of motor taxation shows that long-distance carriers were paying a "fair" share of the costs of road upkeep.*

The railway companies operate 20,000 route miles of track; road transport operators, in common with everybody else, have the freedom of 180,000 miles of public highway. There are 45,000 miles of main classified roads, 27,500 miles of "A" or Class I roads and 17,600 miles of "B" or Class II roads.

The railway companies have had to construct their own track, and they must maintain and renew it from year to year. The companies estimate that £800 millions have been sunk in the track,<sup>1</sup> and the average annual expenditure on maintenance and renewal of Way and Works for the three years, 1936-38, was about £20,000,000. The total annual expenditure on highways, including loan charges but excluding loans, rose to a peak of £68 millions in 1931. The motor road over which the lorry now runs has grown out of the public highway in the past, and there is no figure in the accounts of highway authorities corresponding to the original cost of constructing a railway.

Financial responsibility for highways is shared between local authorities and the Treasury (*vice* the Road Fund, wound up in 1936). Certain roads, 4,500 miles of main road, are now entirely maintained by the Ministry of Transport by authority of the Trunk Roads Act, 1936. The owner or operator of a motor vehicle does not pay directly for the use or improvement of the

<sup>1</sup> *Salter Report*, p. 10.



highway—he is taxed instead. Duties are levied upon goods motor vehicles assessed upon the unladen weight, and upon the fuel consumed.

The annual expenditure of highway authorities has been published since 1889, the year when responsibility for main roads was transferred to the newly established County Councils. Increase of expenditure caused by motor cars first began to engage public attention in 1909. The Road Improvement Fund was instituted in that year, and Porter's *Progress of the Nation* remarked that "in some districts the destruction wrought by pleasure cars has doubled the costs of road maintenance, and the motor licence duties have not compensated the ratepayers for their losses."<sup>1</sup> Money spent on keeping up highways in each year since 1889 can be adjusted to allow (approximately) for changes in the costs of road construction by means of an index of wages such as that prepared by Bowley and Wood. Labour is a large item in highway costs, and must have been larger then than now. If the figure so adjusted is divided by the population, an index of the expenditure of labour upon highways, in "man-weeks" per caput of the population, is obtained. Examination of this index indicates that in the twenty years before 1909 the "real cost" of highway upkeep, measured in these units, was roughly proportional to the population.

With the technique of road construction and repair usual in the two decades before 1909, a road suitable for the traffic of that period and maintained at the standard of those times would have cost in the years between the wars about £40 millions annually. This figure is calculated by raising the index for the base period, 1894-1901, the years immediately before there were any motors, in the same proportion as the increase of population, and making allowance for the increase in wages. It represents the annual sum which the highways of this country would have cost, without the demands which have in fact been made by motor traffic. £40 millions are equivalent, on the average, to about two-thirds of the actual annual expenditure during the two decades from 1920 to 1940.

The public highway is used by many. Besides the motor lorry, there is the bus operator, the private car, and, most important of all, the public. A highway must be provided, and has to be

<sup>1</sup> 1912 edition, p. 548.

maintained, for the use of the public at large, even though there were no motor traffic, or if the motor were confined to a special track. The motorist, private and commercial, cannot be asked to pay in full for a road which he must share with everyone else. The railway track is used exclusively for the companies' trains, and operations may be so adjusted that a maximum efficiency and economy is obtained. Motor traffic has been subject to certain restrictions in the interests of public safety, the most burdensome being the speed limit. The maximum speed of commercial vehicles is 30 miles an hour, and of those exceeding  $2\frac{1}{2}$  tons in weight, unladen, only 20 miles an hour. These limitations are expensive, and are made more so by the restriction of the length of time for which a man may drive.

Between the motor user and the ratepayer equity is reached when the total receipts from motor taxation are equal to the cost of improving and adapting to the needs of modern motor traffic the highway system which has already been provided, and which must be maintained for the purposes of the public-generally. A sum in addition might reasonably be asked to compensate the public for the loss of its exclusive rights to the highway ; or something might be allowed on the other side if motor traffic has made the highway an even more valuable public asset. The total payment required from motor users cannot exceed the whole annual costs of road upkeep. The revenue from motor taxation came to exceed this sum. The receipts of vehicle duty on all classes of vehicles and the fuel tax was greater than the total annual expenditure on highways in each year since 1932. In the years up to 1931 more was being spent on highways, and there were fewer cars of all sorts. The rate of duty on petrol was doubled in 1931. Higher rates of duty were levied on the heavier commercial goods vehicles, over  $2\frac{1}{2}$  tons in weight unladen, in 1933, and one-quarter of the horse-power tax paid by private cars was remitted in 1934.

It has been held by some, among others the Salter Conference,<sup>1</sup> that the revenue raised from motor taxation should cover as well as a reasonable share of the annual expenditure on highways a charge to allow for the presumed original capital outlay on the public road. "With the exception of the new arterial roads and by-passes, there is nothing in modern road history com-

<sup>1</sup> *Report*, Sections 48-50.

parable to the acquisition of land and the construction of tracks in the period of railway development which still accounts for the greater proportion of the railway indebtedness and share-capital."<sup>1</sup>

TABLE 3.

## COSTS OF ROAD UPKEEP AND RECEIPTS OF MOTOR TAXATION

Annual expenditure on highways and receipts of motor taxation,  
£000's.

1. Annual expenditure on highways, Great Britain, including loan charges, but excluding loans.
2. Receipts of motor vehicle taxation, less rebates and refunds.
3. Receipts of duty on hydrocarbon oils. (Petrol Tax).
4. Total tax receipts.
5. Proportion of Column 4 to Column 1.

Year	1	2	3	4	5
					%
1921-22	46,161	10,042	—	10,042	21.8
1922-23	45,165	11,480	—	11,480	25.4
1923-24	46,713	13,124	—	13,124	28.0
25	51,763	15,190	—	15,190	29.3
26	55,156	16,961	—	16,961	30.8
27	56,257	18,685	—	18,685	33.2
28	58,980	23,000	—	23,000	39.0
29	58,092	25,002	12,982	37,984	65.2
30	57,760	25,586	15,043	40,649	70.5
31	66,509	27,086	15,909	42,995	64.5
32	68,384	27,277	29,277	56,544	82.8
33	58,949	27,637	25,310	52,947	89.6
34	56,710	28,357	40,408	68,765	123.3
35	57,101	31,473	42,300	73,777	129.0
36	58,547	29,186	45,129	74,315	126.7
37	...	30,999	47,801	78,800	...

Transport by road motor is a cheaper service than transport by rail, just because, among other things, it has not been necessary to invest, as a first cost, a large sum in the acquisition of lands and the construction of tracks before the carriage of goods by road could be undertaken. The lorry runs over a track which is already there, and which it can share with the public. The costs of adaptation are relatively low—the whole expenditure

<sup>1</sup> *Report*, p. 16.

on maintenance, improvement, and reconstruction from 1920, the year when serious provision first began to be made up to 1939 did not exceed £1,000 millions. Rail service requires a track which can be used for no other purpose, and which has cost £800 millions to construct. The saving of this cost is one of the economies which road transport offers the public. There is no reason why an economy as important as this should be offset by taxation.

There is no objective economic standard which can be used to distribute the annual expenditure upon highways among different classes of motor-users. The motor road is not provided specially for any one class of motor-user, but for all. The highways of Great Britain have been reconstructed to make a track fit both for the fast private car and the slow but heavy commercial vehicle (including public passenger vehicles). The old road has had to be widened, straightened, and strengthened to allow for the high speed of the private car, just as much as to support the weight and to make room for the larger lorry and bus. No part of this cost, incurred in common for all motor-users, can be allocated to any one. The costs of providing highways can be divided only on the basis of what is "fair" or "expedient." Equity and expedience raise questions of policy; and the share of the costs of the road which should be levied upon the commercial goods vehicle cannot be assessed without considering as well, what is thought to be the proper function of the carrier of goods by road.

The roads principally used by lorries are the main roads, the classified "A" and "B" roads. Expenditure on these highways for "maintenance, repair, and minor improvement" is estimated by the Ministry of Transport for the years 1922 to 1931, and has been ascertained since that date. From 1927 to 1930 inclusive, expenditure upon "major improvement and new construction" can be estimated from data published by the Ministry. This expenditure is shown separately since 1931 for all classes of highways.

Expenditure upon repair and improvement of roads can be compared with the revenue raised from the taxation of commercial vehicles. Besides the registration duty, the tax upon fuel must be included. First levied in 1928 at the rate of 4d. a gallon, the duty was raised to 6d. and then to 8d. in 1931, and to 9d. in 1938. Revenue has risen from £13 millions to £30

millions in 1931, and to £48 millions in 1936. How much is paid by commercial vehicles is unknown, but it must be a substantial sum. There are fewer commercial vehicles than private and public passenger cars—the proportion is about 1 to 4—but each commercial vehicle is run a much greater mileage.

TABLE 4

1. Annual expenditure on Class I and Class II roads, including "maintenance, minor improvement, and repair," and "major improvement and new construction": excluding loan charges, but including expenditure met out of loans.
2. Receipts of motor vehicle duty paid by commercial vehicles.
3. Estimated receipts from duty on fuel consumed by commercial vehicles (see note, p. 34 below).
4. Total of Columns 2 and 3.
5. Proportion of Column 4 to Column 1.

Year	1 £000	2 £000	3 £000	4 £000	5
1927-28	24,500	7,843	—	7,843	%
29	24,000	8,360	4,300	12,660	32
30	30,200	8,364	5,000	13,364	53
31	26,300	8,771	5,300	14,071	45
32	31,576	9,054	9,760	18,814	54
33	23,870	9,143	8,440	17,583	60
34	21,602	9,397	13,500	22,897	76
35	21,526	11,462	14,100	25,562	} over 100
36	22,003	11,719	15,000	26,719	
37	...	12,109	15,900	28,000	

SOURCE: *Reports of Administration of Road Fund, Statistical Abstract of United Kingdom.*

Note.—For the years before 1931-32 the figures given in Column 1 are recorded as "estimated."

In the note to p. 34 below, it is assumed that commercial vehicles in general burn one half as much fuel as passenger vehicles. The figure given in column 3 in Table 4 is based on this hypothesis. The share contributed by operators of commercial vehicles is put at one-third of the total receipts.

Tax receipts from commercial vehicles were rising steadily in proportion to the annual expenditure upon classified roads and

bridges. Since the imposition of the petrol tax in 1928, more than half the expenditure has been covered by revenue. Increase in the numbers of vehicles, and higher rates of duty on petrol caused revenue to become equal to expenditure in 1934, the year in which the registration duties on the heavier vehicles were raised. By 1938, revenue from commercial vehicles must have exceeded annual expenditure upon classified roads by a good margin. The number of lorries increased steadily throughout the whole period. But the increase was not as great as that of other motors, and the proportion of commercial vehicles to public and private passenger cars declined steadily, from 28% of total registrations in 1922 to 23% in 1930, and 21% in 1935.

Long-distance motor carriers, competing with the railway, work between the manufacturing towns, the ports, and in industrial areas. The highways connecting the centres regularly served by their lorries are Class I roads, but not the whole length of "A" road is so used. There are many excellent and expensive Class I roads in the holiday districts which serve the private motorists only and are never used by goods traffic unless it be local haulage.

Immediately before the war (1939) expenditure on Class I roads and bridges, on maintenance, repair, and new construction, excluding loan charges, but including expenditure out of loans (loan charges are not separately assessed on the different classes of highway), was at the rate £15-£16 millions a year. Receipts of duty levied on all lorries exceeding two tons weight unladen, the maximum number likely to be engaged on services competing with rail, had reached £6,000,000 since the duties were raised in 1934. This sum should be doubled<sup>1</sup> at least to allow for the proceeds of tax on fuel consumed by these vehicles, making

<sup>1</sup> The yield of petrol tax is distributed on the following assumptions. Suppose first, that commercial vehicles ran, on the average, an annual mileage half again as great as private cars, and did only three-quarters as many miles to the gallon of fuel. Then each commercial vehicle consumed in the course of a year twice as much petrol as each private car. Since there were four times as many passenger vehicles as lorries, total petrol consumption is divided between the two classes of user in the proportion of 2 to 1. Suppose, second, that each heavy long-distance vehicle ran twice the annual mileage and did only half as many miles to the gallon as each lighter vehicle operated locally. Then the petrol consumption ascribed to commercial vehicles on the first assumption must be about equally divided between long distance and local operators, since one quarter only of all commercial vehicles come in the first class. Combining both these assumptions, long-distance operators can be credited with one-sixth of the total petrol consumed, and pay therefore one-sixth of the total receipts from petrol tax, or £7-£8 millions at the present time.

a total revenue of £12 millions annually, or three-quarters of the whole annual expenditure on all Class I highways. Whatever might have been the case before the petrol tax was increased in 1931, and before the duties on commercial vehicles were raised in 1934, it cannot be doubted that the carriers of goods by road in general and the operator who competes with the railway in particular, were both burdened with taxation equivalent to a "fair" share of the costs of highway maintenance.<sup>1</sup>

<sup>1</sup> The interested reader will find a more detailed discussion of the subject matter of this section in a Survey of Transportation in the Province of Nova Scotia prepared by the author at the invitation of the Nova Scotia Economic Council. Reports of the Nova Scotia Economic Council, vol VI, No. 48, 1941. "Road and Rail Transport in Nova Scotia" (Kings Printer, Halifax, N.S., 1942). See also the author's "Highway Costs and Motor Taxation." Public Affairs, March, 1941, (Institute of Public Affairs, Dalhousie University, Halifax, N.S.).

## CHAPTER II

### Railway Rates and Charges

#### SECTION I

*Railway rates discriminate, and this discrimination depends in part upon the conditions of sale.*

THE price of railway transport, the railway rate, is a quantity which can be neither easily ascertained nor simply expressed. The rate varies from one commodity to another. Jam and marmalade between London and Birmingham are carried for 38s. a ton ; galvanised iron sheets for 20s., and asphalt for 12s. 5d. The rate is normally less, the larger the consignment—sugar, 29s. 1d. a ton, lots under two tons, 20s. in 10-ton consignments. A long haul usually costs more than a short ; machinery, Manchester to Edinburgh, 206 miles, is charged 58s. 11d. a ton, Manchester to Birmingham, 76 miles, 31s. 10d. It is not always the case that the longer haul pays the higher rate. Machinery from Manchester to Bristol, 169 miles, is charged 51s. a ton ; from Manchester to London, 187 miles, only 50s.<sup>1</sup>

There are more than 7,000 stations on the British railway systems, and there are not quite 6,000 commodities listed in the classification.<sup>2</sup> Not all the 7,000 stations quote through rates for all commodities to each remaining station ; from some stations more than one rate is quoted for some commodities to certain other stations, to allow, for example, for larger consignments. The Railway Rates Advisory Committee, in its General Report published in 1920, estimated that there were about 40 or 50 million rates on the railway companies' books. There is no reason to suppose that the number has been substantially reduced since that date. Each rate is the price of a particular service of railway transport.

Railway transport is not peculiar among industries in selling its service at widely varying prices. Only those commodities bought and sold upon the organised markets, the produce

<sup>1</sup> The rates, fares and classifications quoted in this and the following chapters are those current before the 5% increase of October, 1937.

<sup>2</sup> For a description of this instrument see below, p. 42.



exchanges where wheat, raw cotton, coffee, and so on, are dealt in, are commonly sold at the same time, everywhere, at the same price for the same grade of produce. The same commodity, sold retail, varies in price from shop to shop, even in the same town.<sup>1</sup> If only one kind of a particular product be considered—Danish butter, for example—the variation will only be less, it will not disappear. Proprietary branded articles are an exception. These goods are sold everywhere at the price fixed by the manufacturer. But there is always some other branded article satisfying the same demand and retailing at a different price. A manufacturer puts out a price list, but only a small part of his output is sold at list prices. Every considerable purchaser expects a discount; even ordinary retail purchasers often have personal connections and can get 15 or 30% off retail price.

Variations in the price of railway transport differ from those in the price of other commodities. The difference between the highest price asked for transport and the lowest (as in the example of hardware and asphalt given above) is greater than the difference between the highest and the lowest prices at which a commodity is retailed, or between the prices at which a manufacturer sells to his most and his least favoured customers. Differences in the prices of goods and services are usually due to ignorance, to carelessness, or to indifference. The purchaser may not know that butter is being sold elsewhere cheaper than the price he is paying, or if he does, he may not care; may consider the trouble of purchasing in the cheapest market not worth the saving which can be made, or may have learned from experience that his own retailer, who charges the higher price, does not take advantage of his ignorance of the grade of the goods bought.

Difference of price, again, may be the result of some difference in quality, or to variation in the cost of making the sale. Coal, for example, is sold loose more cheaply than in bags. Discount is offered for quantity, as motor-car oil is sold more cheaply in five-gallon drums. Allowances similar to these are made in railway rates. Passenger train and the (pre-war) "Green Arrow" service are faster than ordinary freight, and are charged at a higher rate; the charge for a large consignment is less than for a small; and the rate is higher if the goods are not packed securely.

<sup>1</sup> Or did before the institution of price control during the war (1939).

The many millions of railway rates make up a very complicated system of differential charges. At one and the same time, the same service, the transport of goods by railway, is being sold at a series of prices the highest of which may be seven or eight times as great as the lowest. These differences of rate are recognised, known, and accepted. Railway rates are and must be published, and rate books are open to inspection at all stations. No matter how carefully a trader shipping hardware may watch his costs, he cannot have his traffic carried by railway at the lower rate charged for asphalt. The rate for hardware and the rate for asphalt co-exist side by side, despite the fact that all traders know about them, and that the railway company does not offer any trader more favourable terms than it allows to others. The high rates charged on certain commodities cannot be avoided, since that traffic will not be accepted at the lower rates fixed for other goods.

There are other trades in which the same service is sold openly at different prices at the same time. Electric energy is an example. Current for lighting only is sold at a relatively high price ; current for power at a lower rate, and it may be that current is sold for water-heating at a still lower rate. With a two-part tariff the price varies with the number of units taken. The industrial rate is not the same as the domestic rate, and is probably less for a large consumption. Gas undertakings sometimes adopt the same practice, and so do medical men. A doctor varies his fee according to the means of his patient, and may give his services free at the hospital.

But in no other industry or profession is the differentiation of price so great or so thoroughgoing as it is with railways. A doctor must rely on the good-will and acquiescence of his private patients and the professional solidarity of his fellow-practitioners. Otherwise his private patients might go to some other doctor who did not discriminate against them quite so severely, or might even turn to hospitals for free treatment. Electric supply companies must rely upon the honesty of the consumer not to take current for lighting from plugs wired for power (which is larceny) as much as upon general ignorance of the elementary principles of electrical engineering. Without these safeguards there is nothing to stop a consumer taking all his lighting load from his power plugs ; a discovery which many consumers must already have made to judge

by the number of inspectors supply authorities have to maintain.

The possibility of differentiation, in the case of railways as in the case of electric supply authorities, depends upon the conditions of sale which the law permits the seller to make. Railway companies sell their service as the transport of a particular description of goods for a particular trader between two particular stations on a particular day. Thus A, buying transport in order to have one class of goods carried between X and Y, cannot resell that transport to B who wants to send another class of goods between P and Q, cannot even resell it to C who consigns the same class of goods between the same places, nor even use it himself, supposing he had another class of goods to carry, or another place to which he wanted to send the same goods. Thus the railway, if it has an effective monopoly (and for the purposes of argument this may be assumed since there is no longer any competition in rates between separate railway companies), may charge A, B, and C different rates, and different rates to A, according as he sends one class of goods or the other. Theoretically, railways could make as many rates as there are combinations of consignments offered for carriage, traders requiring transport, and stations on the railway system. In practice, discrimination is not carried as far as this, partly because the complications would cost more to administer than the additional revenue to be gained, and partly because certain degrees of discrimination have been disallowed by law; discrimination between traders and between places. But the law still allows and requires the railways to charge different rates for different classes of goods. If the law can prohibit one degree of discrimination, it can prohibit another. The railways might have been required to sell their service by the ton-mile, and to make that service available indifferently for any class of goods, for any trader, and between any pair of stations. No discrimination would then have been possible.<sup>1</sup> All goods would have had to be carried at the same rate per ton per mile, the rate at which the company was required to sell. Had the railway company tried to make a higher charge for some goods than for others, any trader asked to pay the higher charge could have arranged to buy the ton-miles he needed from another trader who shipped

<sup>1</sup> Ignoring for the moment, the hidden discrimination involved in charging the same price for services which might vary in cost.

goods paying a lower rate, rather than direct from the railway. The company would not have been able to prevent this, for it has been assumed that the law forbids the company to restrict the purposes for which the ton-miles it sells shall be used. It is not claimed that this would have been a feasible method of charging. But the example serves to show that the discrimination of railway rates between the different classes of goods can only be enforced if certain conditions are included in the contract of carriage, just as the ability of an electric supply company to charge one rate for lighting and another for heating depends upon the willingness of the courts to enforce the agreement the supply authorities make with the consumer.

Railway passenger fares are an excellent illustration of this point. The price of passenger transport discriminates between one class of passenger and another as freight rates differentiate between commodities, though to a less extent. First-class single fare is higher than third-class fare; single fares are higher<sup>1</sup> than monthly return tickets at a penny a mile, and lastly there are the many types of excursion, day and half-day, where the fare may be as low as  $\frac{1}{4}$ d. or  $\frac{1}{8}$ d. a mile. All passenger tickets are non-transferable in law; that is, a passenger who travels on a monthly return ticket is not permitted to sell the return half to some other traveller who would otherwise have had to pay single fare. Yet it is comparatively rarely that one meets the high-minded and honest traveller who, having to make a single journey, will refuse the offer of the return half of a monthly ticket at 1d. a mile. Those who travel frequently on half-day excursions must have received offers to purchase their return halves, if they are carrying luggage, and cannot have failed to observe the active kerb market there is in these tickets just outside the destination station. It is the intention of the company that only those who propose to return within a month shall have the advantage of the cheaper rate at 1d. a mile, and that only those who are prepared to go and come back on the same day and on a specified train shall be allowed to travel at the very low half-day excursion rate. By selling the return halves of their tickets, both seller and purchaser, who want to travel only one way and who legally should have paid the full rate of  $1\frac{1}{2}$ d. a mile for this service, obtain their transport at a much cheaper rate, and defeat the intended

<sup>1</sup> or were!

SPECIMEN PAGE OF  
GENERAL RAILWAY CLASSIFICATION.

BAS.

44

## GENERAL CLASSIFICATION OF GOODS, 1938.

	Class		Class
Basins and Stands, Lavatory, earthenware, complete—		Baskets, Workmen's Tool (as Bags, Workmen's Tool)	
4 tons .. .. .	13c	Baskets, e.o.h.p., minimum 10 cwt. per truck .. ..	20
2 tons .. .. .	15c	Bass Baskets, in bundles.. ..	18
Less than 2 tons .. ..	17c	Bass or Whisk, prepared for making Brooms or Brushes (as Fibres, Vegetable).	
(Exceptional rates for Baths apply).		Bass or Whisk, not prepared for making Brooms or Brushes—	
<i>Note</i> :—If not packed, as damageable goods not prop- erly protected by packing.		Minimum 2 tons per truck ..	12
Basket Trunks, nested .. ..	19	Minimum 30 cwt. per truck..	15
Basket Work, e.o.h.p., minimum 10 cwt. per truck .. ..	20	Less than 30 cwt. per truck ..	18
Baskets, Bass or Rush, in bun- dles .. .. .	18	Basswood (see Timber Classi- fication).	
Baskets, Coal (Colliers'), rough	13	Bates or Pures, Dog, Hen and other, in barrels, drums, sacks or tins .. ..	9
„ Dress (as Trunks).		Bath Brick Powder—	
„ Fruit, cardboard, with tinned iron handles, nested, in bundles, minimum 10 cwt. per truck .. .. .	18	In sacks, .. .. .	8
„ Iron .. .. .	16	E.o.h.p. .. .. .	11
„ Japanese, minimum 10 cwt. per truck (as Baskets e.o.h.p.) .. ..		Bath Bricks .. .. .	7
„ Japanese, nested (as Basket Trunks nested)		Bath Chair and Trailer Bodies, basket-work or wicker- work, wrapped in paper and canvas, minimum 10 cwt. per truck .. ..	20
„ On Wheels or Castors ..	19	Bath Chairs .. .. .	20
<i>NOTE</i> .—If not packed, as damageable goods not properly protected by packing.		Bath Cubes (as Bath Salts).	
„ Osier or Twig (as Hampers, empty, e.o.h.p.).		Bathing Salt (Common Salt), not perfumed—(as Salt, com- mon, packed).	
„ Spale, or Spale Swills, or Chip, in crates or in bundles not packed nor wrapped, mini- mum 10 cwt. per truck .. .. .	18	Bath Salts (Soda Crystals), per- fumed—	
„ Wooden, nested, for plants, fruit or vegetables .. ..	18	In casks, iron drums, or sacks	13
		In tins or cartons in cases ..	13
		E.o.h.p. .. .. .	18
		Bath Seats, wood or iron, with cork tops and wire hangers	18
		Baths, Bird, stone, roughly wrought .. .. .	7

discrimination between one class of passenger and another. The railway company is defrauded just as the electric supply authority is cheated when some consumer, whose knowledge of electrical engineering is greater than his respect for the law, plugs his lights into a power socket. In each case the fraud can be perpetrated because there is not much danger of detection. It is no more easy for the railway company to ensure that only those persons shall come back on return halves who originally travelled out, than it is for the electric supply authority to discover which consumers are using power points for lighting.

But the purchaser of railway goods transport, the trader, cannot avoid the differentiation of railway rates either legally or illegally. The nature of the merchandise must be declared on the consignment note, otherwise the highest railway rate of all is charged. One commodity cannot readily be disguised as another—it is much easier to verify the class of goods which is being consigned than it is to ascertain whether the passenger now presenting a return half is the one who originally bought the ticket. Each consignment must pay the rate prescribed, and none can be carried at any rate less than which the company is willing to charge for goods of that description. The company's power to enforce its system of discrimination between one class of merchandise and another is complete.

## SECTION 2

### *Classification of goods, history, and present practice.*

The basis of the present system of railway rates is an instrument known as the "Classification." The classification is set out in a volume entitled *General Railway Classification of Goods by Merchandise Trains (G.R.C.)*. It contains among other things an alphabetical list of the goods currently accepted for transport by railway, occupying 200 pages, and including 5,690 separate commodities. Each of these commodities is assigned to one (or more) of twenty-one categories. These categories make up the twenty-one classes of the current *G.R.C.* A specimen page of the *General Railway Classification* is reproduced,<sup>1</sup> and a sample list is given of articles to be found in each of the twenty-one classes.<sup>2</sup> To each class there is applied a standard rate. Goods in Class 21 are charged at the highest rate per ton per mile, and those in

<sup>1</sup> p. 41.

<sup>2</sup> pp. 43-44.

intermediate classes at progressively lower rates down to the goods in Class 1, which pay the lowest rate of all. The class into which many goods are placed depends not only upon the description of the goods, but also upon the condition in which they are handed to the railway, whether in large or small consignments, upon the type of packing, the degree of finish, and so on.

Classification of merchandise is universally adopted by railway

# SAMPLE LIST OF ARTICLES TO BE FOUND

## IN EACH CLASS OF THE

### *GENERAL RAILWAY CLASSIFICATION*

- Class 1.—Ashes and cinders for road repair or waste tips; chalk in bulk, coal pyrites; iron ore.
- „ 2.—Basic slag; chrome iron ore; coke-breeze; gannister; sand in bulk or sacks.
- „ 3.—Lime in bulk; magnesite, burnt; roadmaking and road-repairing material, tarred.
- „ 4.—Coal-tar pitch, in owners' tank wagons, 8-tons per truck; creosote, in owners' tank wagons.
- „ 5.—Building bricks; concrete blocks and slabs; brewers' grains, wet; iron and steel scrap; manure, other than stable or farmyard; sugar beet, 6-tons per truck.
- „ 6.—Ammonia sulphate, 6-tons; china clay; ferro-manganese; blooms, billets, bars, and ingots, iron and steel; naphthalene in owners' tank wagons.
- „ 7.—Stone, roughly wrought; cement; gypsum, packed; prepared hearthstone; kelp; boiler plates and tubes, iron and steel; molasses, 15-tons, in owners' tank wagons.
- „ 8.—Armour plate; bitumen; cider apples; grain, whole flaked or ground; pig lead; nails and spikes, iron and steel; oilcake and cattle-food; potatoes and vegetables for human consumption.
- „ 9.—Crude asbestos; bone ash; colliery guide rods, not to take strain; emery stone; forgings in the rough, iron or steel; Fuller's earth; plasterers' laths; marble blocks, rough.
- „ 10.—Bean sticks; animal charcoal; cork, granulated or dust, press packed, 2-tons; flower pots; iron or steel mesh for reinforced concrete; earthenware tubes.
- „ 11.—Ale and porter in casks or cases; tarred felt, 2-tons; ordnance; litharge; vegetable oils in casks or iron drums, 2-tons; paper in bales or bundles; soap.

undertakings in all parts of the world, though the detail varies. In a simpler form it is usual among canal carriers, and is adopted, by some shipping lines.

The earliest recorded classification is one prescribed by Parliament in 1790 for the Glamorgan Canal. Two classes only were set out. The first contained "iron, ore, limestone, lime, and manure," to be charged at 2d. per ton per mile, and the second (the higher class) contained "stone, timber, iron goods and wares."

- 
- Class 12.—Copper, blooms and wrought, plate bar or strip, 5-tons; electric cable, 5-tons; glue; hay and straw, 2-tons; machines and machinery, complete or in parts, 5-tons, other than of non-ferrous metals and not fine machinery.
- „ 13.—Wooden balls for throwing at coker-nuts; wooden clothes line posts; colliers' baskets and boxes; cockles; cotton, raw, press-packed; window-frames, iron and steel, packed.
- „ 14.—Brass bolts and nuts; electric cooking stoves, 2 tons; dried fruit; petroleum jelly in casks or iron drums; cured hams; kitchen boilers; letter boxes; furnaces for heating metals, without instruments.
- „ 15.—Laundry blue; pigments in casks or iron drums; confectionery in casks or iron drums; undressed leather; mustard; yarn; garden frames, glazed in cases or crates.
- „ 16.—Torch batteries; milk churns; china in crates; crabs; dyes and colours, not dangerous; glass sheet; paper handkerchiefs in bales; raw wool; textiles, not silk; British wines in cask.
- „ 17.—Machinery belting; books in paper covers; cigarette pictures; hardware, not aluminium, nickel, or pewter; raw rubber; lavatory stands and basins; tinware; complete mirrors in frames.
- „ 18.—Flock bedding, packed; bicycle frames; boots and shoes in cases; broom and brush heads; wooden chairs, packed, not upholstered; coin, copper or bronze; mixed groceries; grass growing in boxes; clothing, not silk.
- „ 19.—Alabaster; animals, live; leather goods; electric bulbs; hobby horses; boilers and water heaters, copper and brass; soldiers' busbies; mixed drapery in boxes or parcels.
- „ 20.—Aeroplanes, packed; amber; animals, stuffed in cases; bagatelle tables; bismuth; cigars; silk lace; furniture, packed.
- „ 21.—Gold and silver, and manufactures thereof.



and all other things," to be charged at 5d. per ton per mile. A classification into five divisions was sanctioned for the Peak Forest Canal in 1794 ; and in 1800 the Gravesend Canal was provided with a classification into four classes :—

	Per ton-mile
All stone, bricks, hay, straw, and similar commodities .. ..	2d.
All cattle, coal, rough timber, pig iron, and similar commodities	3d.
All flour, wheat, potatoes, etc. .. ..	4d.
All hops, fruits, merchandise, and other things whatsoever ..	6d.

From the first, railway rates and charges followed the pattern set by the canal rates which preceded them. The early private Acts authorising the construction of railways generally contained provisions limiting the maximum charges which might be made for the different classes of freight. Opportunity was often taken when an amalgamation received Parliamentary sanction to revise or extend the maximum charges prescribed in the earlier Acts. By the time that the consolidation of the early railways was complete, the charging powers of each company had to be sought in a number of separate Acts of the British Parliament, in one case as many as fifty.

Samples of these maximum charges are given below, taken from the L.N.W.R. Amalgamation Act of 1846 and the L. & Y. and East Lancashire Amalgamation Act of 1859. Charges in pence per ton per mile for distances not exceeding fifty miles :—

Coal and coke .. ..	1½d.
Slack .. ..	1d.
Manure, bricks, sand .. ..	1½d.
Grain .. ..	2½d.
Sugar, timber, etc. .. ..	2½d.
Cotton, manufactured goods, etc .. ..	3d.
Iron (not damageable) .. ..	1½d.
Iron (damageable) .. ..	2d.

In fact, the maximum rates laid down in the private railways Act were usually in excess of the rates the railways found it paid to charge. A working rate-book of the rates actually effective was required. The Railway Clearing House, established by the companies themselves in 1842, undertook this duty. The first Clearing House Classification containing 326 articles, was published in 1847. This classification grew continuously as the business of the railway companies increased. By 1888 it was being used by all railway companies, and it now included 2,753

articles, divided into seven classes : a Mineral Class, a Special Class, and five numbered classes.

In 1881 a Select Committee of the House of Commons was appointed to enquire into the question of the rates and charges of railway and canal companies, and a second committee was appointed the following year. As a result of the investigations of these committees, the Railway and Canal Traffic Act of 1888 was passed. This empowered the Board of Trade, among other things, to establish one classification to be applied uniformly to all railways.

After more than a year of discussion between traders and railway companies, agreement could not finally be reached and the new classification had to be adjudged by Lord Balfour of Burleigh and Sir Courtenay Boyle on behalf of the Board of Trade. It was largely based on the older Clearing House Classification, providing for one more class, eight against seven ; A, B, C, and 1, 2, 3, 4, 5, in place of the earlier mineral class, special class, and 1-5.

The commodities contained in these classes were such as the following :—

*Class A* (minimum consignment 4 tons in owners' wagons): heavy minerals, coal, limestone, gravel, sand, iron ore.

*Class B* (minimum consignment 4 tons): bricks, china clay, lime, and salt in bulk, common slates.

*Class C* (minimum consignment 2 tons): grain, flour, oil cake, cement, iron and steel, timber and wood pulp.

*Class 1.* Cotton, paper, soap, sugar, and oils.

2. Bacon and hams, organs, twine, cotton yarn.

3. Grey cotton cloth, cotton and linen goods, hardware, woollen goods.

4. Copper boilers, light drapery articles, furniture in vans.

5. Musical instruments, furniture not in vans, silk, surgical instruments, etc.

This classification was confirmed for each railway company by the Order Confirmation Acts of 1891 and 1892, and became law on 1st January, 1893. It was a statutory classification. It could only be amended with the consent of the Board of Trade, unlike the earlier Clearing House Classification which could be altered at will by the railway companies party to it. The Board of Trade Classification stood without serious modification for thirty-five years, till 1st January, 1928, when it was superseded by the present General Railway Classification.

The work of revising the Classification began in 1920. The Ministry of Transport Act, 1919, Section 21, provided for a committee, the Rates Advisory Committee. This committee consisted of six persons, a lawyer (the chairman), two members representing trading and agricultural interests, one representative each of transport and labour, and one appointed by the Minister of Transport.

The committee were asked by the Minister of Transport to consider and report upon—

“1. The principles which should govern the fixing of tolls, rates, and charges for the carriage of merchandise by freight and by passenger train and for other services, and

“2. The classification of merchandise traffic and the particular rates and charges and tolls which should be charged thereon and for the services rendered to the traders by the railways.”<sup>1</sup>

These terms of reference were communicated on 6th February, 1920, and the committee presented its report on 22nd December of the same year. The committee stated that the existing general system of charging gave satisfaction to the trading community as a whole, and that the railways equally accepted that system as a basis on which to work. Neither the Railway Companies' Association nor the representative bodies of traders to whom the committee addressed their questions took objection to the existing system of charging or had any new system to suggest. The committee thereupon felt relieved “from any obligation to consider a new system,” and turned “to the task of making the main principles of the existing system apply in present circumstances, and advising what modification should be made in respect of subsidiary elements of the system.”<sup>2</sup> Classification thus remained the basis of railway rate-making, in default of any other suggestion from traders or railway companies.

The committee recommended that the railway companies should be asked to prepare a new classification, and suggested that the number of classes should be twenty-one. These twenty-one classes were to be substantially subdivisions of the eight old classes (A, B, C, and 1-5). The principles of classification were to remain the same, but with one addition. The rebate for quantity should be made by putting the goods in a lower class when the

<sup>1</sup> *Report on General Revision of Railway Rates and Charges*, 1920. Cmd. 1098, p. 3.

<sup>2</sup> *Ibid.*, p. 4.

quantities were larger. "For instance, bricks might be placed in one class when carried in less than 6-ton lots, but in a lower class when carried in 6-ton loads."<sup>1</sup>

The Railways Act of 1921 (§29 (1)) empowered the committee to determine this new classification. Section 29 (2) laid down the following rules to guide the committee:—

"The classification shall be divided into such a number of classes containing such descriptions of merchandise as the committee think fit, and the committee, in determining the class into which any particular merchandise shall be placed, shall, in addition to all other relevant circumstances, have regard to value, to bulk in comparison to weight, to the risk of damage, to the cost of handling, and to the saving of cost which may result when merchandise is forwarded in large quantities."

Like the earlier classification of 1891-92, this classification was the result of negotiation between the committee, the railway companies, and the traders. The railway companies were asked to submit proposals for a new classification. The objections of traders were then invited, and the railway companies replied. This work, long and tedious, was arranged by the Traders' Co-ordinating Committee, a body organized for the purpose by the Federation of British Industries. This committee dealt with the objections of all traders, not only those members of the F.B.I.

Those objections which could be met by agreement or concession were disposed of at meetings arranged between representatives of the railway companies and representatives of the Co-ordinating Committee, of traders' associations, and of individual traders. The remaining objections had to be heard before the Rates Advisory Committee itself, at hearings which occupied thirty-two days between February, 1922, and March, 1923. The evidence taken at those hearings fills a large number of volumes.

The new classification was finally published on 12th June, 1923. It did not come into effect till five years later, on 1st January, 1928, the date named as the "Appointed Day." Apart from minor changes which have since been made, this classification is now effective as the General Railway Classification.

Section 29 (2) of the Act of 1921, setting out the principles upon which the classification is to be based, names "all relevant circumstances"—value, bulk in relation to weight, risk of

<sup>1</sup> *Report*, p. 16.

damage, cost of handling, and the saving of cost when traffic is offered in large consignments. With the possible exception of the last, which was specifically recommended by the Rates Advisory Committee in its report, these principles were not new. They were principles of classification which had been worked out by the railway managements in the past, and which were adopted for the new classification with the acquiescence of both traders and railway companies, as the report of the Rates Advisory Committee made clear.

Of these principles, the most important is the value of the goods. Goods are divided up among twenty-one classes primarily in relation to their selling value per ton. It is consideration of value more than that of any other single characteristic which determines whether any particular sort of goods is placed in a high class or a low one, that is, pays a high rate per ton per mile or a low rate. The higher the price per ton at which the goods are sold, the higher the railway rate charged. Consider, for example, the classification of brass and copper in hollow blooms :—

	Brass	Copper
5-ton lots .. ..	11	12
2-ton lots .. ..	12	13
Less than 2 tons ..	13	15

Brass and copper in hollow blooms are alike in all respects as far as adaptability for carriage is concerned. But they differ in price, copper at the time of writing (July, 1937) being about £10 a ton more than brass. Copper is therefore placed in a higher class than brass. That is true for most of the parallel forms in which brass and copper are offered for transport, e.g. brass nails and rivets, Class 14 ; copper nails and rivets, Class 16 ; wire, in 2-ton lots, brass, Class 13 ; copper, Class 14.

The price of any merchandise and its class are related only approximately—differences in classification do not, and cannot, allow accurately for every difference in price. More valuable goods are generally put in a higher class than the less, but goods similar in kind may be found in the same class, notwithstanding a marked difference in their values. Metal in ingots shows clearly

the general relationship between selling value per ton of merchandise and its place in the classification. From the point of view of the carrier, a consignment of two tons of ingots of one metal is no different from two tons of ingots of any other metal. The load is as large (or as small) in the one case as in the other, the cost of handling the same, the amount of wagon space taken

Metal (in ingots)	Price per ton (July, 1937)	Class 2-ton lots
Steel .. .. .	£10	6
Zinc .. .. .	£23	8
Lead .. .. .	£24	8
Brass .. .. .	£50	12
Copper .. .. .	£61	13
Antimony .. .. .	£70	13
Aluminium .. .. .	£100	16
Nickel .. .. .	£180	16
Tin .. .. .	£255	16

up and the risk of damage very little different. Yet since value is the underlying principle of classification, a consignment of ingots of aluminium, tin, or nickel pays a rate twice as great as an exactly similar consignment of ingots of steel.

Cotton and textiles are other examples. These goods become more valuable through the process of manufacture, and the class rises with the degree of finish :—

Commodity	Class
Raw cotton (press-packed) .. .. .	13
Yarn .. .. .	15
Textiles, not silk .. .. .	16

Silk goods, more expensive than cotton, are placed in higher classes, depending upon the proportion of silk in the fabric :—

Commodity	Class
Textiles containing not more than 30% silk .. .. .	18
Textiles containing not more than 60% silk .. .. .	19
Other textiles containing a greater proportion of silk .. .. .	20

The remaining principles of classification, bulk in relation to weight, cost of handling, risk of damage, and the saving of cost when traffic is offered in large consignments, take into account

the cost to the railway company of carrying the goods. Of these the first, bulk in relation to weight, receives most consideration. It is allowed for by taking the weight of the commodity which can be loaded into a truck. Risk of damage, and ease or otherwise of handling, are subordinate.

Thus commodities which load well, are easily handled, and not very susceptible to damage, like soap and nails, come fairly low down in the classification, in Classes 11 and 8 respectively. Hollow-ware (pots and pans, and so on) and furniture, which do not load well, are not easily handled, and can very easily be damaged, are found in Classes 17 and 20 respectively. Machines and parts, loading 5 tons per truck, are placed in Class 16 ; less than 5 tons per truck, in Class 18.

Following the recommendation of the Rates Advisory Committee, the saving of cost arising out of large consignments is allowed for by placing larger consignments in a lower class than small. This is a general rule. Most commodities are found in one or more classes according to the size of the consignment. The usual divisions are 4 tons, 2 tons, and less than 2 tons. 4-ton consignments are put one or two classes lower than 2-ton consignments, which in turn are a class or two below the any quantity rate, e.g. lemon, orange, and citron peel :—

4 tons	..	..	..	..	..	Class 12
2 tons	..	..	..	..	..	Class 13
Less than 2 tons			..	..	..	Class 15

The lowest classes are restricted to certain minimum quantities. Thus Classes 1-6 are for 6-ton lots, Classes 7-9 for consignments of 4 to 6 tons, and Classes 10 and 11, 2 to 4 tons. At the other extreme "smalls," consignments of 3 cwt., and under, are subjected to a special surcharge above the class rate.

The classification of some goods depends upon the manner in which the goods are packed, the less secure the packing the higher the class, e.g. petroleum jelly or grease—

In casks or iron drums	..	..	..	Class 14
In cases or in tins protected by boards				Class 16
Otherwise (e.o.h.p.)	..	..	..	Class 18

The condition of the goods is also considered in some cases, e.g. beetroot pulp when wet is in Class 6, when dry in Class 8.

When a new article is to be classified, the important factor

considered, though one not mentioned in the Act, is the relationship of the new commodity to other similar commodities which are already classified. It is hard to imagine an entirely new commodity, completely unlike anything else, being offered for transport. Most new commodities, developed from time to time, are similar to other older articles, and the class of the newcomer will depend very much upon that of the old. Thus wireless sets and wireless parts, when they became important commercially, were classed as telephones, and refrigerators as ice safes. As the traffic in a new article grows and comes in larger consignments, the commodity is given the usual concession of lower classes for 2-ton and 4-ton lots.

Re-classification of existing articles turns very much upon the classification of similar articles, and particularly of articles in the same class. If one commodity is placed in a lower class, it may well lead to a demand for similar re-classification of many other articles in the same (original) class, on the ground that these goods always have been classed together and ought to remain so.

The classification described is the Classification of Goods by Merchandise Trains. This is only one of the classifications used for purposes of railway rate-making, though it is the most important and the most complicated. There is also a "Dangerous Goods Classification" for commodities such as chemicals, paints, inflammable oils and greases, gunpowder and explosives, etc., a classification of livestock, of returned empties, and a classification of goods by passenger train.

Coal comes in a separate class of its own. In the schedules which the companies submitted to the Rates Advisory Committee, a separate classification for coal was proposed, divided into seven classes. This proposal was ultimately withdrawn, and the present single class for "Coal, coke, and patent fuel" put in its place.

### SECTION 3

*Standard Rates are adjusted to revenue, and must be charged.  
Wagon hire, cartage charges, owner's risk rates, and private  
siding agreements.*

Like the classification, railway rates and charges are fixed by law. The Railways Act of 1921 (§§ 30, 31, and 32) required the



railway companies to submit schedules of rates based on the new classification. These schedules were considered by the Railway Rates Tribunal, a body set up by that Act (§§ 20—28). The opinions and objections of traders were invited, and, after long discussion between the railway companies, the traders, and the Tribunal, the charges were published as the “Schedule of Standard Charges approved by the Railway Rates Tribunal.” This schedule is divided into eight parts :—

*Part I.*—Goods and Minerals in Classes 1-21 by merchandise trains.

*Part IA.*—Returned empties and rolling stock running on its own wheels.

*Part II.*—Animals by merchandise trains.

*Part III.*—Carriages and chassis by merchandise trains.

*Part IV.*—Perishable commodities by passenger trains.

*Part V.*—Small parcels by merchandise trains.

*Part VI.*—Additional charges for heavy articles by merchandise trains (articles over 12 tons).

*Part VII.*—Passengers and their luggage, and other passenger train traffic.

*Part VIII.*—Use of companies' trucks when the provision of trucks is not included in the charge for conveyance.

The Railway Rates Tribunal were also required to fix a day, the “appointed day,” upon which these schedules were to become effective. The day chosen was 1st January, 1928.

The Standard Charges published by the Railway Rates Tribunal are the charges which each amalgamated company “shall be entitled to make for all services rendered in respect of which charges are fixed and no variation either upwards or downwards shall be made from such authorized charges unless by way of an exceptional rate or exceptional fare continued, granted, or fixed under the provisions of this Part of this Act, or in respect of competitive traffic in accordance therewith” (§ 32).

The system of rate regulation introduced by the Act of 1921 differs from that previously in force. The older method had been to establish maximum rates, and to leave the companies free to charge any rates equal to, or less than, the maximum at their own discretion. The Railway Rates and Charges Order Confirmation Acts of 1891-92 (see above, p. 46) embodied schedules of the maximum rates which the railway companies were authorized

to charge. There were thirty-five such schedules, each applied to different railway companies or groups of railway companies. Like the Classification of 1888, the schedules of maximum rates had been determined after negotiation between the railway companies and the traders, the Board of Trade presiding over the discussions. Some of these new maximum rates were below the rates actually being charged immediately before the Acts came into force, some above. In order to recoup themselves for the reductions enforced, the railway companies raised all other rates up to the level of the new maxima. Traders protested against the increases (though these were within the law), and Parliament passed another Act in 1894. This Act established the rates in force immediately before the new schedules of the Order Confirmation Acts became law, on 31st December, 1891, as the *de facto* maxima.

The body charged with the administration of these Acts was the Railway and Canal Commission, a court constituted by the Railway and Canal Traffic Act of 1873, and reconstituted by the Railway and Canal Traffic Act of 1888. The Commission placed a very narrow interpretation on the power of railway companies to raise rates above those effective in 1892. When complaint was made of an increase in a particular rate, it was necessary for the company to show that there had been a commensurate increase in the cost of carrying that particular traffic, and that costs had increased at the time when the rate was raised. Rates which had been reduced since 1892, and which were now to be raised again, were treated in the same manner. Proof of altered circumstances sufficient to justify the increase had to be adduced, notwithstanding the fact that the rate as increased would still be less than the rate charged in 1892.

The Act of 1894, and the construction the Commission placed upon it, made railway rates very inflexible. As the Rates Advisory Committee remarked in their General Report, "this Act as so interpreted has accordingly had the effect of making any increase by the companies in the rates in force on 31st December, 1892, a matter of extreme difficulty, and practically of constituting the rates in force at that date the maximum rates which the companies can charge except in so far as increases are allowed by the Railway and Canal Traffic Act, 1913."<sup>1</sup>

<sup>1</sup> *Report*, p. 12.

After the increase of wages and the improvement of working conditions following on the railway strike of 1911, another Railway and Canal Traffic Act was passed in 1913. Railway companies could now raise rates if they could show that there had been a general increase in labour costs since August, 1911, and that any particular increase of rate was a not unreasonable part of a general increase required to meet this rise in working expenses.

The only condition required of a maximum rate was that it should be a reasonable rate for the carriage of merchandise. The Act of 1921 introduced a different rule of rate-making. Section 58 adjusts powers of charging to revenue. Sub-section (1) enacts: "The charges to be fixed in the first instance for each amalgamated company shall be such as will, together with the other sources of revenue, in the opinion of the rates tribunal so far as is practicable yield with efficient and economical working and management an annual net revenue hereinafter referred to as the standard revenue. . . ." The standard net revenue which the Act entitles railway companies to earn is, very broadly, the actual net revenue earned by the constituent and subsidiary companies in 1913 plus 5% on capital invested since then, plus 5% on capital which had not become fully remunerative by 1913, plus one-third of the economies resulting from amalgamation. In sum, for the four amalgamated companies, the standard net revenue amounts to £51 million.

The companies are bound by the Act to charge these (standard) rates, neither more nor less. Rates less than standard (exceptional rates and agreed charges) may be charged only in accordance with the provisions of Sections 36 to 39 of the Act, and Section 37 of the Road and Rail Traffic Act, 1933. The statutory maxima of the Acts of 1892 and 1894 were fixed and could only be raised in certain limited circumstances. The standard and exceptional rates of the Act of 1921 were subject to periodical review, and it was intended that they should be increased or decreased according as the actual net revenue earned by the amalgamated companies fell short of, or exceeded the standard revenue. Section 59 of the Act gave the Railway Rates Tribunal the duty of conducting the annual review, and required that body to make any general modification either upwards or downwards in the standard and exceptional rates deemed necessary to enable the company to earn the standard revenue.

After the first year of the operation of the system, 1st January to 31st December, 1928, the four amalgamated companies addressed a letter to the Tribunal stating that, despite the fact that standard net revenue had not been earned, it was not the intention of the companies to apply for an increase in the standard and exceptional rates. No increase was made on that occasion, and none has been made or applied for since then in any year up to 1937, although the companies have never earned the standard net revenue. The year following 1928, 1929, had been the best year for railways in the past decade. £40,000,000 was earned out of the £51,000,000 to which they are entitled. Road competition put higher rates out of the question. Lower rates have been required if the railways were to keep the traffic. Increases would only have made their losses worse, and diminished still further the chances of earning the standard net revenue. In 1937, however, believing presumably that circumstances had altered, the railway companies applied for, and obtained, a general increase of rates of 5%, to become effective in October, 1937. Hopes of larger revenues from the higher charges were disappointed. Railway gross revenue in 1938 was £7 million less than in 1937.

The greater part of goods traffic carried by railway is merchandise included in the General Railway Classification of goods, and traffic in coal. Traffic in goods covered by other classifications, the dangerous goods classification, the passenger train classification, and so on, is of comparatively minor importance. In what follows, Part I only of the Schedule of Standard Charges, "The Scale of Standard Charges in respect of goods and minerals in Classes 1-21 by Merchandise Trains," is described.

To each class of goods in the *G.R.C.* there is applied a standard charge per ton per mile, a charge which will be less the longer is the distance the goods are carried. The lowest standard charge applies to goods in Class 1, the next lowest to goods in Class 2, and so on up to the goods in Class 21, which pay the highest rate of all. These standard charges are set out in a form specified in the Fourth Schedule to the Act. The charge for conveyance, the charge for the actual carriage of the goods over the companies' lines in the companies' trucks, is separated from the charge for terminals, the charge for the use of station premises at each end, and for the services rendered there by the companies, loading

TABLE 5

## BASIS OF SCALES OF CHARGES IN RESPECT OF GOODS AND MINERALS BY MERCHANDISE TRAINS

*Fractions of less than one half-penny to be dropped, and fractions of one half-penny or over to be charged as one penny.*

Class in respect of Merchandise to which charges are applicable		Standard Rates for Conveyance				Class
		For the first 20 miles or any part of such Distance	For the next 30 miles or any part of such Distance	For the next 50 miles or any part of such Distance	For the remainder of the Distance	
		Per ton per mile d.	Per ton per mile d.	Per ton per mile d.	Per ton per mile d.	
1	In Owner's Wagons .. ..	1.90	0.95	0.55	0.50	1
2		2.15	1.05	0.70	0.65	2
3		2.25	1.10	0.80	0.70	3
4		2.30	1.20	0.90	0.75	4
5		2.60	1.25	0.95	0.75	5
6		2.65	1.35	1.05	0.80	6
7	In Railway Com- pany's Wagons ..	3.05	1.80	1.35	0.95	7
8		3.20	1.90	1.45	1.00	8
9		3.40	2.10	1.70	1.15	9
10		3.50	2.30	1.85	1.25	10
11		3.65	2.55	2.10	1.45	11
12		3.75	2.65	2.20	1.60	12
13		4.05	2.85	2.40	1.75	13
14		4.40	3.15	2.75	2.15	14
15		4.75	3.45	3.00	2.25	15
16		4.80	3.55	3.10	2.35	16
17		5.35	4.10	3.35	2.55	17
18		5.50	4.25	3.50	2.75	18
19		6.40	5.15	4.25	3.50	19
20		7.50	6.20	5.10	4.30	20
21		11.25	9.30	7.65	6.45	21

## NOTES.

## SERVICE TERMINALS.—

Traffic in Classes 7 to 10—

Service Terminals for loading and unloading are not included in these scales.  
The authorised charge is 5d. per ton for each service when performed by the  
Railway Companies.

## TRAFFICS IN CLASSES 1 to 4 FORWARDED IN RAILWAY COMPANY'S WAGONS.—

To be charged as provided herein, plus the appropriate amount of charge for  
Wagon Hire, see Scale No. 2.

## MINIMUM QUANTITIES.—

Unless otherwise provided in the Classification of Merchandise—

Classes 1 to 6 are applicable to consignments of 6 tons and upwards.

Consignments less than 6 tons are in the following Classes:—

4 tons and under 6 tons	..	..	..	..	Class 7
2 tons and under 4 tons	..	..	..	..	„ 10
Less than 2 tons	..	..	..	..	„ 12

TABLE 5 (continued)

## BASIS OF SCALES OF CHARGES IN RESPECT OF GOODS AND MINERALS BY MERCHANDISE TRAINS

Fractions of less than one half-penny to be dropped, and fractions of one half-penny or over to be charged as one penny.

Class	Standard Terminals					Class
	Station Terminal at each end	Service Terminals				
		Loading	Unloading	Covering	Uncovering	
	Per ton s. d.	Per ton s. d.	Per ton s. d.	Per ton d.	Per ton d.	
1	0 3	—	—	—	—	1
2	0 5	—	—	—	—	2
3	0 6	—	—	—	—	3
4	0 10	—	—	—	—	4
5	0 6	—	—	—	—	5
6	0 10	—	—	—	—	6
7	1 0	—	—	1.25	1.25	7
8	1 2	—	—	1.25	1.25	8
9	1 4	—	—	1.50	1.50	9
10	1 7	—	—	1.50	1.50	10
11	2 0	0 6	0 6	2.50	2.50	11
12	2 5	0 8	0 8	2.50	2.50	12
13	2 5	0 8	0 8	2.50	2.50	13
14	2 5	0 10	0 10	3.00	3.00	14
15	2 5	0 11	0 11	3.00	3.00	15
16	2 5	1 1	1 1	3.00	3.00	16
17	2 5	1 4	1 4	3.00	3.00	17
18	2 5	1 7	1 7	3.00	3.00	18
19	2 5	2 2	2 2	5.00	5.00	19
20	2 5	2 8	2 8	6.00	6.00	20
21	3 7	4 0	4 0	9.00	9.00	21

## MINIMUM QUANTITIES (continued).—

Classes 7, 8, and 9 are applicable to consignments of 4 tons and upwards.

Consignments less than 4 tons are in the following Classes :—

2 tons and under 4 tons .. .. . Class 10  
Less than 2 tons .. .. . „ 12

Classes 10 and 11 are applicable to consignments of 2 tons and upwards.

Consignments less than 2 tons are in Class 12.

Classes 12 to 21 are applicable to consignments of any weight, subject to Small Parcel Scale No. 5.

If the charges at the lower Class at the minimum weight are cheaper than the charges at the higher Class at actual weight, the former will be applied.

When the condition “in Owner’s Wagons” is attached to the Classification of any merchandise, the same condition applies to smaller quantities carried under the above arrangement.

ADDITIONAL CHARGES ARE MADE FOR COLLECTION AND/OR DELIVERY.

SOURCE : Schedule of Standard Charges.

and unloading goods, covering and uncovering. The terminal charge is a rate per ton fixed irrespective of distance. These charges, in their statutory form, are set out in the table on pages 57-8.

Goods in Classes 1-10 are usually carted to the station and loaded by the consignor, unloaded and collected by the consignee, the railway company doing no more than provide the trucks and haul the goods from one station or terminal point to another. Since no terminal service is rendered by the railway companies in respect of such goods, no charge is made.

Goods in Clases 1-4 are normally conveyed in "owner's wagons." The rates for these classes of merchandise contain no charge for the use of trucks, since none are provided by the company. If, however, a trader shipping these goods wishes to use the company's trucks, he is required to pay in addition to the standard charges for conveyance the charge for wagon hire contained in Part VIII of the Schedule of Standard Charges, "The Scale of Charges which the Companies may make for the use of trucks provided by them for the conveyance of merchandise when the provision of trucks is not included in the rates for conveyance." This charge depends on the distance, the rate per ton per mile diminishing as the distance increases. Unlike the rate for conveyance, no differentiation is made between goods in the several classes. The same charge is paid for wagon hire by all goods in the first four classes.

Traffic is normally conveyed in "owner's wagons" only by railways in England and Wales, excepting the North-Eastern section of the London and North Eastern Railway. Railways in Scotland and the North-Eastern section of the L.N.E.R. undertake to provide company's wagons for all classes of traffic. The standard rates for traffic on those railways include the charge for wagon hire as well as the charge for conveyance. The two scales are in fact the same. If the charge for wagon hire be added to the standard rate for traffic in owners' wagons in Classes 1-4 of the English scale, the sum is equal to the rates quoted in the North-Eastern and Scottish scale for the same classes of traffic in companies' wagons. When the new classification was being formed in 1920 and 1922, the goods in the lowest classes of the old classification were divided according as they did or did not normally travel in owners' wagons. Those which did were placed in a lower

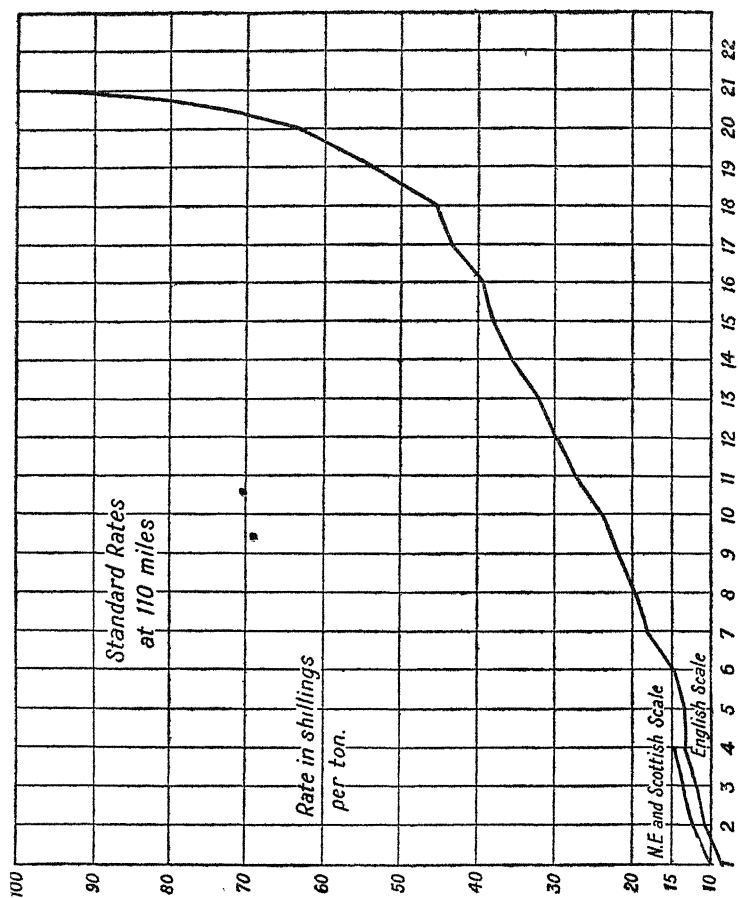


FIG. 1 (see page 63)



TABLE 6  
STANDARD RATES, IN SHILLINGS PER TON  
CLASS

Distance (Miles)	Rates include Charges for Collection and Delivery (C.D. rates)							Excluding Collection and Delivery (S.S.)			Traffic in Owners' Wagons	
	20	19	17	15	13	11		9	7	5	3	1
6	23/3	21/10	18/4	14/7	13/7	12/3		5/5	4/7	2/4	2/2	1/5
10	25/9	23/8	20/4	16/2	15/0	13/6		6/7	5/7	3/2	2/11	2/1
20	32/0	29/0	24/7	20/1	18/4	16/6		9/5	8/2	5/4	4/9	3/8
30	37/2	33/4	28/0	23/0	20/9	18/8		11/2	9/8	6/5	5/8	4/6
40	42/4	37/7	31/7	25/10	23/1	20/9		12/11	11/2	7/5	6/7	5/3
50	47/6	42/1	34/10	28/9	25/6	22/11		14/8	12/8	8/6	7/6	6/1
60	51/9	45/5	37/8	31/3	27/6	24/8		16/1	13/9	9/3	8/2	6/6
80	60/3	52/6	43/3	36/3	31/6	28/2		18/11	16/0	10/10	9/6	7/5
100	68/9	59/7	48/10	41/3	35/6	31/8		21/9	18/3	12/5	10/10	8/4
120	76/1	65/5	53/1	45/0	38/5	34/1		23/8	19/10	13/8	12/0	9/2
140	83/1	71/3	57/4	48/9	41/4	36/6		25/7	21/5	14/11	13/2	10/0
160	90/3	77/1	61/7	52/6	44/3	38/11		27/6	23/0	16/2	14/4	10/10
200	104/7	88/9	70/1	60/0	50/1	43/9		31/4	26/2	18/8	16/8	12/6
250	122/10	103/4	80/8	69/4	57/4	49/9		36/2	30/2	21/10	19/7	14/7
300	140/5	118/1	91/4	78/8	64/8	55/10		40/11	34/1	24/11	22/6	16/8
400	176/3	147/1	112/2	97/6	79/3	67/11		50/6	42/0	31/2	28/4	20/10

Effective from 1st January, 1928, to 1st October, 1937.

TABLE 7.  
STANDARD RATES, IN PENCE PER TON-MILE  
CLASS

Distance (Miles)	Including Charges for Collection and Delivery (G.D. rates)						Excluding Collection and Delivery (S.S. rates)				Traffic in Owners' Wagons	
	20	19	17	15	13	11	9	7	5	3	1	
6	46.50	43.67	36.67	29.17	27.17	24.50	10.83	9.17	4.67	4.33	2.83	
10	30.90	28.40	24.40	20.60	18.00	16.20	7.90	6.70	3.80	3.50	2.50	
20	19.20	17.40	14.75	12.05	11.00	9.90	5.65	4.90	3.20	2.85	2.20	
30	14.20	13.33	11.20	9.20	8.30	6.80	4.47	3.87	2.57	2.27	1.80	
40	12.62	11.27	9.48	7.75	6.93	6.23	3.88	3.35	2.23	1.98	1.58	
50	11.40	10.10	8.36	6.90	6.12	5.98	3.52	3.04	2.04	1.80	1.46	
60	10.35	9.08	7.53	6.25	5.50	4.60	3.23	2.75	1.85	1.63	1.30	
80	9.04	7.88	6.49	5.44	4.73	4.23	2.87	2.40	1.63	1.43	1.11	
100	8.25	7.15	5.86	4.95	4.20	3.80	2.61	2.19	1.49	1.30	1.00	
120	7.60	6.54	5.30	4.50	3.84	3.40	2.37	1.98	1.37	1.20	0.92	
140	7.12	6.11	4.92	4.14	3.54	3.13	2.19	1.83	1.28	1.13	0.86	
160	6.75	5.89	4.62	3.94	3.32	2.92	2.06	1.72	1.21	1.07	0.81	
200	6.28	5.33	4.21	3.60	3.01	2.63	1.88	1.57	1.12	1.00	0.75	
250	5.90	4.95	3.87	3.32	2.75	2.38	1.73	1.45	1.05	0.94	0.70	
300	5.62	4.72	3.65	3.15	2.59	2.23	1.64	1.36	1.00	0.90	0.67	
400	5.29	4.41	3.38	2.93	2.38	2.04	1.52	1.16	0.94	0.85	0.63	

Effective from 1st January, 1928, to 1st October, 1937.

class than those which did not. Classes 2 and 4, 3 and 5, 4, and 6 are subdivisions in this way of the three lettered classes, A, B, and C of the classification of 1888. The standard class rate in the Scottish scale for Classes 2, 3, and 4, and the standard rate in the English scale for the same classes but with wagon hire added, are equal to the standard rates on both scales for Classes 4, 5, and 6.

It is usual in practice to quote charges for transport in shillings per ton, and not in the disintegrated state in which they are presented in the Basis of Scale. The preceding tables set out the standard rates in shillings per ton, and in pence per ton per mile for every other class of goods at certain mileages. The minimum distance for which rates are quoted is six miles.

These two tables, together with the Basis of Scale, illustrate the characteristics and the structure of the standard rates for the carriage of merchandise by railway in England. The rate rises markedly, but reasonably uniformly, from Class 1 to Class 18 (see diagram),<sup>1</sup> the standard rate for the latter class being about five times as great as the rate for the former class. After Class 18 the rate increases more rapidly. The standard rates for Classes 19 and 20 are about 20% higher than the rates for the preceding class. The Class 21 rate is much higher still; about 45% greater than the Class 20 rate, and more than twice as great as the Class 18 rate. But Class 21 contains such goods as gold and silver articles, for which the cost of insurance is likely to be very high, and which do not usually travel by merchandise trains. For all practical purposes, Class 21 and the very high rate applied to it may be ignored.

The Standard Rate is for traffic carried at the company's risk, as defined in the standard terms and conditions of carriage, drawn up under the authority of Section 42 of the Act. A trader may, if he chooses, have his goods carried at his own risk, "owner's risk," and the railway companies are required to quote appropriate owner's risk (O.R.) rates. These rates are obtained by deducting a given percentage from the Standard Company's Risk Rate. The deductions, approved by the Railway Rates Tribunal according to the terms of Section 46 of the Act, are set out as a "Scale of Standard Charges for the conveyance of damageable merchandise by merchandise trains under owner's

<sup>1</sup> p 60.

risk conditions." There are eight scales, lettered A to H, rising from a deduction of  $2\frac{1}{2}\%$ , Scale A, to  $12\frac{1}{2}\%$ , Scale H. The letters "A" to "H" are appended to the classification of goods in the *G.R.C.*<sup>1</sup> When goods are so marked, the standard owner's risk rate is obtained by subtracting the appropriate percentage from the standard rate. Oil stoves for cooking, 4 tons, are classed "12C." The standard (company's risk) rate is the Class 12 rate; owner's risk rate is standard Class 12 rate less 5%. Mordant liquors in carboys, "16H"; owner's risk rate, standard Class 16 rate less  $12\frac{1}{2}\%$ .

For the majority of goods there are no special owner's risk rates at all; company's risk is the only rate quoted. Deduction for owner's risk can only be claimed for goods in respect of which there is real danger of damage in transit or, as the Act puts it, when "the difference in the company's liability under the two sets of conditions (O.R. and C.R.) in respect of the merchandise in question is not insignificant." Owner's risk does not entirely relieve the companies of liability; the railway remains responsible for damage which can be proved to result from the "wilful misconduct" of the companies' servants.<sup>2</sup>

Deduction for owner's risk represents the charge for insuring goods against damage in transit. The size of the deduction depends therefore upon the risk and the extent of the possible damage in any given case. It is calculated from the relationship which claims for damage in respect of any traffic have borne to the receipts from that traffic.

Standard charges are the rates for carrying goods between stations or terminal points only, station to station rates, or "S. to S." The service of carting goods between the trader's premises and the company's stations is not included in the standard rate. Railways make an additional charge for cartage. The gross rate, the station to station rate plus the cartage charge, is known as a Collected and Delivered rate or "C. and D." rate.

Railway companies do not normally undertake to collect and deliver all traffic. Certain dangerous goods are not carted at all. Goods in Classes 1-10, in Class 21, and a list of other articles—those goods which are likely to injure the company's

<sup>1</sup> See above, p. 41.

<sup>2</sup> Kahn-Freund, *Law of Carriage by Inland Transport*, 1939, p. 47.

vehicles, or which are unduly expensive to cart—are only collected and delivered by special arrangement and upon special terms.

Cartage charge varies according to the class of goods, the higher the class the higher the charge. It varies from one station to another. There are eight scales of cartage charges in the "Scales of Charges for collection and/or delivery of merchandise traffic." A list of the stations at which collection and delivery is under-

TABLE 8  
CARTAGE CHARGES

Scale	Classes in Classification				Returned Empties	
	11 to 13 per ton	14 to 16 per ton	17 and 18 per ton	19 and 20 per ton	Classes A, B, C, E, and H per cwt.	Class G per cwt.
A	s. d. 2 6	s. d. 2 6	s. d. 3 4	s. d. 4 2	s. d. 0 2	s. d. 0 4
B	2 11	3 4	3 4	3 9	0 2	0 4
C	3 4	3 9	3 9	4 2	0 2	0 4
D	3 9	4 2	4 2	5 0	0 2	0 4
E	4 2	4 7	4 7	5 5	0 2	0 4
F	4 7	5 0	5 0	5 10	0 2	0 4
G	6 3	6 8	6 8	7 6	0 2	0 4
H	5 10	6 8	6 8	9 2	0 5	0 10
Liverpool and Birkenhead (Town Traffic only to and from London)	3 9	3 9	4 6	Class { 4 6 19 5 0 20 }	0 2	0 4

taken (carting stations) is published, showing the scale applicable to each station. At most stations, the lowest scale, "A," is charged. The highest, "H," applies to London stations only. Liverpool and Birkenhead have a special scale for town traffic to and from London, and there is a special scale for smalls traffic between non-competitive stations on the Southern Railway.

The scale of cartage charges is shown above. These scales only apply within the carting area ; additional charges are made for cartage outside that area.

The railway companies' accounts, published in the *Annual*

*Railway Returns*, show that the cartage services are rendered at a loss, the proceeds of the cartage rates being less than the cost to the company of providing this service. The loss is only a paper loss. The gross rate, the standard rate plus the cartage charges, must be a rate which pays the company. All that the loss on the cartage services implies is that an amount is deducted from the gross C and D rate as the revenue of the cartage service smaller than the sum which companies are levying on that service as its costs. This is done deliberately. In order to induce the trader to employ the companies' cartage instead of his own, the amount which can be deducted for cartage has been made less than the cost to the trader of having his goods carted by an outside contractor, or in his own vehicles. Railway companies are restrained by the law of undue preference<sup>1</sup> from refusing outright access to their stations to traders' own vans, and those of outside contractors. The same end is reached by diminishing the cartage rebate. Railway stations can thus be kept clear of congestion caused by many vehicles picking up and delivering traffic. Terminal services can be worked more expeditiously, and less space is required in stations and goods yards.

Many traders have their own sidings and receive loaded wagons from, or deliver them to, the railway companies at the point where the siding joins the company's lines. This traffic makes no use of the railway's stations or terminals. It is delivered instead to the siding entrance, and collected therefrom. Traffic to or from private sidings pays only a part of the standard rate, the charge for conveyance. The remaining part, the charge for terminals, is not assessed upon it. In place of the terminal charge, private siding traffic is charged for the service of delivering to and collecting from the siding, and any other special services at the siding which the railway company may render. These charges are not fixed in any scale of standard charges, but are settled by special arrangement between the siding owner and the railway company. They may be more or less than the charges for terminals which they replace, but by agreement are very often the same.

<sup>1</sup> See below, p. 75.

## SECTION 4

*Exceptional Rates; the terms upon which rates lower than Standard may be granted. Control by the Tribunal no bar to the grant of such rates. Exceptional Rates given for many reasons other than road competition.*

The system of regulation established by the Acts of 1892-94 fixed the *maximum* railway rates which might be charged. The companies were free to charge any rate less than the maximum which they saw fit, provided that no undue preference was created.<sup>1</sup> In fact as the the Rates Advisory Committee remarked, "the railway companies, in practice, carried an immense quantity of traffic at rates substantially below these maxima, as well as carrying certain goods (mainly in the merchandise Classes 1-4) at rates which equalled or were close to the maxima."<sup>2</sup> There were many rates less than the maxima, or "class" rates; scale rates or tariffs for large consignments, scale rates for through traffic, and "exceptional exceptional" rates, rates quoted to allow for particular circumstances of particular traffics, and often forced on the railways by pressure of competition from other railways or from carriers by water. •

It was one of the objects of the new system of regulation established by the Railways Act of 1921 to do away with this plurality of exceptional rates. The number of classes in the classification was raised from 8 to 21 in order that the existing exceptional rates might be incorporated into the standard class rates. The need for exceptional rates, it was hoped, would be made much less, and the whole system of railway rates would become more simple. This hope was disappointed. The amount of traffic moving at exceptional rates became not less than it was, but more, and the proportion increased since the "appointed day," from two-thirds of the total tonnage conveyed to over four-fifths at the time of the last test.

Proportion of traffic carried at exceptional rates<sup>3</sup>:—

<sup>1</sup> See *infra*, p. 75.

<sup>2</sup> *Report*, p. 13.

<sup>3</sup> Figures taken from monthly *Railway Statistics*, No. 194. Details of tests made of traffic carried at standard and exceptional rates during one week in March, 1928, 1930, and 1935. The proportion of gross receipts from traffic at standard rates is higher than the proportion of tonnage carried at standard rates, presumably because the standard rates themselves are higher than the exceptional rates, and possibly also because shorter hauls give rise more frequently to the exceptional circumstances which lead to a demand for exceptional rates than do the longer.

Date			Tonnage	Gross Receipts
March, 1928	..	..	66.71%	50.20%
March, 1930	..	..	76.52%	59.83%
March, 1935	..	..	83.76%	68.40%

The terms upon which railway companies may charge exceptional rates, less than standard class rates, are set out in Sections 36 to 39 inclusive of the Railways Act of 1921. Section 36 of the Act suspended all exceptional rates in operation immediately before the Appointed Day, except rates which were not less than 5 % nor more than 40 % below standard class rate, and which had been agreed in writing between the trader and the railway company, or notified in writing to the railway company by the trader with a request that the rates be referred to the Railway Rates Tribunal for determination. Railway and trader could agree also to continue exceptional rates more than 40 % below standard. Rates as low as this had to be referred to the Tribunal, but remained effective pending decision. Exceptional rates not used for the two years preceding 1st January 1923 could be discontinued by the railway companies. During the negotiations before the Tribunal which preceded the determination of the schedules of standard charges, traders had been assured that no existing rate would be raised as a result of the new system of charging. The companies accordingly, immediately the standard charges became effective on 1st January, 1928, took advantage of these provisions of the Act to continue wholesale the exceptional rates in operation at the time.

The railway companies were free to grant at their own discretion new exceptional rates which are not less than 5 % nor more than 40 % below standard, subject only to the condition that such rates must be reported to the Minister of Transport within fourteen days. Exceptional rates which were outside these limits, less than 5 % or more than 40 % below standard, require the consent of the Railway Rates Tribunal.<sup>1</sup>

The Minister of Transport has certain powers over railway

<sup>1</sup> The upper limit of not less than 5 % below standard was repealed by Section 40 of the Road and Rail Traffic Act of 1933. The railways have since been free to quote any rate not more than 40 % below standard.



companies in respect of exceptional rates. He may refer to the Rates Tribunal any exceptional rates which he considers will prejudice traders not enjoying such rates, or which will prevent the company from earning the standard revenue. The object of the latter provision is to prevent any company from granting unduly low exceptional rates for some traffics, rates which do not assist the company to earn its standard net revenue. This company might then go before the Tribunal and demand an increase in its standard charges on the ground that its net revenue was less than the standard allowed by Section 58 of the Act. The Minister has not yet used this power.

Railways are at liberty to raise or cancel exceptional rates fixed by the companies themselves within the limit of their discretion of 40% below standard, upon thirty days' notice being given to the trader. If any trader objects to the increase, the matter must be referred to the Tribunal. But no objections will be heard if it is proposed to increase a rate which has once been reduced, as long as the new increased rate is still less than the rate in operation before the original reduction was granted. Exceptional rates which have been determined by or referred to the Rates Tribunal can only be increased upon application to the Tribunal.

The Tribunal is a Court of Record and not a judicial body. There is only one question relevant when an application is made before the Tribunal for consent to a rate, whether the application is for a new and lower exceptional rate, to raise or lower a rate already in force, or for authority to vary the standard rates themselves. What effect will the proposed rate have upon the company's ability to earn its standard net revenue? The Act allows the railways a standard revenue, given efficient and economical working and management, and the Tribunal is required to fix charges, both standard and exceptional, so that the companies can earn that revenue. The Tribunal must therefore disallow any rates which are likely to produce a net revenue greater than standard, a state of affairs which did not arise until after the outbreak of war in 1939; and it must allow *any* rate which will assist a company to earn its standard revenue, if net revenue is *less* than the standard. This rule was laid down in the case of *Great Western Railway and Others v. Bristol Corporation*<sup>1</sup> heard before the Tribunal in 1928. An application was made for consent

<sup>1</sup> *Railway, Canal and Road Traffic Cases*, vol. 20, p. 22.

for new exceptional rates more than 40% below standard. The rates were alleged by the objectors to create an undue preference. In the course of its decision, the Tribunal said: "The question of undue preference or prejudice might be urged; but we can have nothing to do with undue preference. Then prejudice might be argued, but . . . they (the railway company) can create as much prejudice as they like up to 40% and we have nothing to say . . . that leads one rather to the view that this question of the 40% is largely, if I (the President of the Tribunal) may call it, the economic and fiscal question with regard to the standard. When this matter is remitted to us for the 40% in fact it is said, 'Right up to the 40% they will be all right, but if they are going beyond that they are bound by the Act, they are bound to let you know and get your consent.' It does not bring in all the questions you (counsel) have so eloquently and properly argued; it does bring in the one problem, the fiscal question, the economic question, *vis a vis* the standard charges, the standard revenue."

This rule was followed in the case of the Great Western Railway and the Chamber of Shipping of the United Kingdom<sup>1</sup> and confirmed on appeal.<sup>2</sup> The railway company asked for consent to put in rates 56%, 57% and 58% below standard, and was opposed by coastwise carriers, who alleged prejudice. The Tribunal said, "We regard ourselves as bound by the decision of the Court in the case of *G.W.R. v. Bristol Corporation*. . . . We interpret that decision as finding that the only question which is relevant to the consideration of such an application for consent to grant an exceptional rate is the question of the effect which the rate, if granted, would have upon the revenue of the railway company concerned."

In 1937 the companies applied for a general increase in rates of 5%, and this rule was applied once more.<sup>3</sup>

"With regard to the objections raising the question of public interest, we can find no warrant in the Railways Act for the contention that the predominant and overriding consideration in determining upon a review under Section 59 of the Act whether

<sup>1</sup> *Railway, Canal and Road Traffic Cases*, vol. 24, p. 328.

<sup>2</sup> *Ibid.*, vol. 25, p. 223.

<sup>3</sup> *Ibid.*, Ninth Annual Review of Standard Charges, vol. 26, p. 1, at p. 17 and p. 19.

a modification by way of increase ought to be made in the public interest."

"Consideration of the provisions of the Railways Act, particularly Sections 32, 36, 37, 38, and 41, appears to indicate that the legislature in enacting Sections 58 and 59 of the Act regarded the realization by an amalgamated company of its standard net revenue to be in the public interest, and we can find no warrant in the Act for the contention that a modification which would enable the company to earn its standard revenue must not be made if it is not in the public interest. We do not consider that acting under the provisions of Section 59(4) of the Act we are required to have regard to the interest of the public except in so far as it may be relevant—though it is difficult to imagine circumstances in which it would be relevant—in connection with the question of the nature and extent of the modification necessary to enable the standard revenue to be earned and except to the extent to which we are directed to have regard to it by Section 58(2) of the Act."

"... We know that wherever the railway companies are of the opinion that their net revenue can from any particular traffic be improved or protected by the granting of new or reduced exceptional rates, such rates are put into force and large numbers of such rates have been and continue to be brought into operation with our consent. This policy has tended to increase their traffics or mitigate losses, and cannot in our view be affected by any modification of charges pursuant to Section 59(4) of the Act. No increase can in our opinion be regarded as a means of increasing the volume of traffic carried by railway, and, as we consider it necessary under Section 59(4) to make an increase to enable each of the railway companies to earn or get near its standard net revenue, we are unable to give effect to that which we are required by Section 58(2) to have regard."

It follows from these decisions that if the net revenue of the companies is less than the standard, *any* exceptional rate agreed upon between the railway and the trader will be allowed by the Tribunal as a matter of course, regardless of whether that rate is more than 40% below standard or not. Such a rate could only be disallowed if the Tribunal held that to charge the rate would not increase the company's net earnings; a decision which would

mean that the Tribunal was not satisfied that it would pay the company to charge the rate. The Tribunal in effect would be telling the railway management that it did not know its own business, a grave step for any Court to take. This conclusion is important, for it means that neither the Act of 1921 nor the Railway Rates Tribunal prevented the railway companies in the depressed circumstances of 1928 to 1939 from quoting any rate, however low, which might have been needed to defeat competition or to take advantage of the possibilities of any movement of traffic. As long as earnings are expected to be improved by the rate, and net revenue is less than standard, the Tribunal must allow the rate.

Railway companies are not likely to propose reductions of rate from which they expect to lose—reductions, that is, which diminish and do not increase net earnings. Railway net revenue in fact was continuously less than standard from the Appointed Day, 1st January, 1928, when this part of the Act became effective. Had they so chosen, the companies might have applied for any rate, or any change by way of reduction or increase which might have been required, and consent would have been granted. The control over railway rates exercised by the Rates Tribunal under authority of Part III of the Act of 1921 did not limit the “commercial freedom” of railways to put in any rates warranted by the demands of the traffic or the exigencies of competition.

Road competition is not the only reason compelling the grant of exceptional rates. Rates less than the standard class rates are required to meet the variety of particular circumstances surrounding the traffic of individual traders. This diversity could not possibly be allowed for beforehand in general documents such as the classification and the schedules of standard charges. Particular circumstances call for exceptional rates. Quite apart from the necessity of meeting road competition, such rates are normally granted in a number of general cases. Exceptional rates are granted for traffic in large consignments, consignments greater than the 6-ton load which is the maximum concession given in the standard class rates, for 10-ton lots and over, for traffic in train loads, or for any reasonable guaranteed minimum of traffic. A temporary increase of traffic over any line may call for an exceptional rate. Thus a building contractor engaged on a big job can get exceptional rates for his cement, steel, bricks, and

other supplies. Exceptional rates granted for temporary purposes are often themselves temporary, and expire automatically at the end of the year or half-year, if the regular traffic is not sufficiently large to warrant an exceptional rate.

Besides road competition, competition from other carriers may be the cause of exceptional rates. Important in the past, but less so now, is the competition of other railways or of water carriers, coast-wise and canal. A great number of the "exceptional exceptional" rates, less than the maxima of the Order Confirmation Acts of 1892-94, was forced upon the railways by this competition, and it is still not unknown for traders to obtain exceptional rates for their traffic because they have the alternative of transport by canal or coastwise shipping. There was at one time much competition between Birmingham and Bristol from the canal, and from the water route up the Severn via Stourport. That competition has long since disappeared, and relatively little traffic now passes over either of those routes. But the rates between Birmingham and Bristol were fixed when that competition was active, and its effect is still to be seen in the relation of the rates between those two towns to the rates between other centres which were not connected by water.

Competition between traders themselves is responsible for many exceptional rates. A contract for the supply of bricks to a particular point would normally go to the brick kilns closest to the site. But the railway companies may grant an exceptional rate—either a temporary rate for the duration of the contract, or permanently—on bricks consigned from more distant kilns, and thus enable these producers to compete for the contract. This is, of course, to the advantage of the more distant kilns, for they widen their market, and to the advantage of the railway, for it secures a longer haul.<sup>1</sup>

Exceptional rates are often the result of industrial location. A manufacturer setting up a new works, if his enterprise affords the prospect of an adequate traffic, will obtain exceptional rates on his traffic out and in. These exceptional rates may be decisive if the works is to be placed in one place rather than another. Just as different districts may find themselves competing for new works, so railway companies compete, attracting new works to

<sup>1</sup> The extent to which a railway company can thus interfere with the advantage one producer gains from his geographical situation is limited by undue preference—see *infra*, p. 75.

sites on their own systems by the rival offers of favourable exceptional rates. Big new works, where large quantities of traffic are promised, are certain of getting exceptional rates; smaller works, where the traffic expected is less, will find the railway companies correspondingly less willing to offer favourable exceptional rates.

Within the limits of the law of undue preference,<sup>1</sup> railways grant concessions in rates wherever the trader has an attractive and valuable traffic to consign. It is to the advantage of the companies to offer exceptional rates as long as these rates increase the gross ton-mileage hauled, and as long as the traffic is worth having at the rate. A railway company always wants to stimulate new traffic, and to attract new works to its own particular system. It is also ready to give producers access to more distant markets, for the longer haul increases traffic and revenue just as much as greater tonnage.

## SECTION 5

### *Disintegration of Exceptional Rates.*

Section 40 of the Railways Act of 1921 requires exceptional rates to be "disintegrated." To "disintegrate" a rate is to divide it up into its component parts—the charge for conveyance, the station and service terminals, and where appropriate, the charges for accommodation provided and services rendered at sidings. In the case of "C. and D." rates, there is the additional charge for cartage to be separated from the gross rate. Standard class rates are presented in the disintegrated form in the "Basis of Scale"; and only exceptional rates require special disintegration.

Disintegration of an exceptional rate shows the trader what he is paying for each of the several services, conveyance, terminals, and so on, provided by the company. The trader has always maintained, and his claim has been allowed, that he should not pay for services he does not use. With the disintegrated rate before him, he knows what deduction he can claim from the rate if he performs any service for himself, if, for example, he loads or unloads his traffic. Private siding owners are particularly interested in this question of disintegration, for they do not use the

<sup>1</sup> See *infra*, p. 75.

charge the same rates for all traffic of the same description passing over the same line of railway in the same circumstances, "and no reduction shall be made either directly or indirectly in favour of or against any particular person or company travelling on or using the railway."<sup>1</sup> Section 2 of the Railway and Canal Traffic Act of 1854 prohibited railway companies from charging rates which create an undue preference. The Railway and Canal Traffic Act, 1888, threw the burden of showing that an apparent preference was not undue on to the railway company (Section 27(i)). Section 27(ii) of the same Act gave the Courts for the first time some guidance in deciding what circumstances might justify an apparent preference, and so enable an accused railway company to rebut the charge that an alleged or admitted preference is "undue."

Railway and Canal Traffic Act, 1854, Section 2 : "No railway company, canal company, or railway and canal company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Railway and Canal Traffic Act, 1888, Section 27(i) : "Wherever it is shown that any railway company charge one trader or class of traders or the traders in any district lower tolls rates or charges for the same or similar merchandise or lower tolls rates or charges for the same or similar services than they charge to other traders or classes of traders or to the traders in another district or make any difference in treatment in respect of any such trader or traders, the burden of proving that such lower charge or different treatment does not amount to an undue preference shall lie upon the railway company."

Section 27(ii) : "In deciding whether a lower charge or difference in treatment does or does not amount to an undue preference, the Court having jurisdiction in the matter, or the Commissioners as the case may be may, so far as they think reasonable, take into consideration whether such lower charge or difference in treatment is necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made

<sup>1</sup> Section 90, Railway Clauses Consolidation Act, 1845.

and whether the inequality cannot be removed without unduly reducing the rates charged to the complainant; provided that no railway company shall make, nor shall the Court or the Commissioners sanction any difference in the tolls rates or charges made for or any difference in the treatment of home and foreign merchandise in respect of the same or similar services."

Though the Act of 1854 prohibited undue preference, it did not state what was a preference, and did not define which preferences were undue and which were not. The Act of 1888 is a little more specific. Preferences are constituted by lower rates, tolls, or charges for the same or similar merchandise, or for the same or similar services, and by differences in treatment. But by 1888 undue preference had been prohibited for thirty-four years, and the courts responsible for the administration of the law had been left without statutory guidance as to what practices were to be disallowed. This body of law is almost entirely case-made. To find out what is a preference, and which preferences are undue and which are not, judicial decisions rather than Acts of Parliament must be studied.

The administration of this law lay at first, in the hands of the ordinary courts of law. The machinery of the courts, as might well be expected, was not well suited to the task of deciding a technical matter of this sort, and in 1873, jurisdiction was transferred to the Railway and Canal Commission, a body specially constituted to deal with railway affairs. This tribunal consisted of three, one of whom was to be a lawyer and one a railwayman. Appointed temporarily at first, for five years, it later became permanent. The tribunal was not very successful in its early years. It was not till the general codification of the law governing railway charging powers had been undertaken by the Order Confirmation Acts of 1892-94 that the Commission was able to put an end to the practices it was designed to prevent.

The abuses coming under the general head of undue preference were two. First, the railways were accused of granting lower rates or of affording preferential treatment to certain individual traders. Other traders in competition with the first were having to pay higher rates, and/or were getting less favourable treatment for their merchandise. The second complaint was that traffic from more distant districts was being charged at a rate per ton



per mile lower than that on similar traffic from districts closer to a common market. The traders in the latter districts were being thereby deprived of the geographical advantages of their situation.

The Commission sought to interpret the law so as to obtain impartial treatment, both in matters of rate and of facilities for all traders in competition with each other and requiring the same or similar services from the railway company. If a preference in rate or facilities is to become "undue," the goods of the trader suffering the prejudice must be similar in kind to merchandise receiving the preference, and marketed in competition with it. A railway must not favour any particular trader either by reduced rates or favours in kind unless the company is prepared to offer the same rates or the same favours in kind to all competitors of that trader who want similar and competitive merchandise carried by the railway company in question. For example, two merchants shipping bricks into the same town must be given the same rates and service, for the traffic in each case is the same, and one merchant's bricks are competitive with the other's. But stone which is shipped into this same town can be carried at a lower or a higher rate than the bricks, even though the stone is for building. For though stone is competitive merchandise, in that both bricks and stone are used for building, it is not similar. Bricks going from the same brickfield to two different markets, however, need not necessarily be carried at the same rate per mile, nor be offered the same facilities. Though the merchandise is similar, there is no competition. Bricks for use in one town do not compete with bricks sold for use in another. Consignments of the same goods moving over the same line of railway between the same points must have the same rate and the same facilities, otherwise Section 90 of the Act of 1845 is violated. But there is no undue preference if one trader's goods pass at a lower rate on one company's line while another trader's goods are moving at a higher rate between the same points over the lines of another railway company.

Whether there is a preference or not is a matter of fact. Are the goods of one trader in fact being carried at a lower rate than the same goods for another trader in competition with the first, or is the first trader in fact receiving better facilities for his traffic than the second? But "the mere circumstance that there is an advantage does not of itself show that it is an undue preference

within the meaning of the Act.” Whether a preference is due and reasonable, or undue and unreasonable, is a conclusion “to be arrived at, looking at the matter broadly, and applying common sense to the facts proved.”<sup>1</sup> Many of the cases heard before the Railway and Canal Commission have been brought to decide the circumstances which make a preference, admitted or proved, a due and reasonable, and therefore legal, preference, and not one which is undue and unreasonable, and hence illegal.

An action alleging undue preference will only lie if the complainant can show that he has been injured by the preference of which he complains. If there is no significant injury to the trader, the preference is not undue.

An admitted preference can be justified and will be held due and reasonable if the railway company can show that any of the following circumstances are present :—

1. That the goods of the trader receiving the preference cost less to carry than those of the complainant.

2. That there are agreements assuring the railway reasonable advantages directly connected with the conveyance of the traffic being preferred, for example, a railway company would be justified in carrying a trader's goods at a specially low rate if the trader in return agreed to allow the railway the use of land rent free, on which to construct works required to accept and deliver that traffic.

3. That there are agreements guaranteeing minimum amounts of the traffic passing at the preferential rate.

Any or all of these circumstances will justify a preference and permit a railway company to charge a lower rate to one trader than it does to another, even though the goods in question are similar and competitive. But a preference can only be justified if the preferential rate or service is open to all traders who comply with the same conditions as the preferred trader, and if the preferential rates are made public. Any attempt to keep a rate secret raises a strong suspicion of undue preference. Thus a charge of undue preference may be rebutted if the railway company can show that any other trader whose traffic could be carried at the same reduction of cost would receive the advantage of the lower rate; or that any agreement into which the company

<sup>1</sup> *Denaby Main Colliery v. M.S.L. Railway, Railway and Canal Traffic Cases*, vol. 3 p. 426 ; *Pickering Phipps v. L.N.W. Railway, ibid.*, vol. 8, p. 83.

may have entered with the preferred trader was an agreement the terms of which were publicly known and one open to all who complied with those conditions. In all such agreements, the Commission is careful to assure itself of the adequacy of the consideration granted by the trader in return for the concession in rate, and to determine that the consideration was given in respect of the traffic for which the concession was received.

A preferential rate for a guaranteed minimum of traffic constitutes an undue preference unless the railway company is prepared to offer correspondingly preferential rates to those traders able to guarantee minimum quantities of traffic, comparable but not necessarily the same as the minimum guaranteed by the preferred trader.

The law of undue preference has also been held to require any railway company to treat impartially traders from different districts, competing in a common market. Section 27(i) of the Act of 1888 mentions specifically lower rates and more favourable treatment of traders in one district compared with those in another as one of the circumstances which may amount to an undue preference. In general a railway company may not interfere in any way with the geographical advantages of any one district relative to a common market. The relative advantage which each producing point enjoys on account of its geographical relation to the common market must be preserved. But there are some very important exceptions to this rule.

Districts which have the advantage of a competitive route, by rail or by some other carrier (usually water when these cases were heard), may be charged lower rates than other districts not so well favoured. But all traders to whom both routes are open must benefit by this reduction. The reduction itself must be commensurate with the value to the company of defeating the competition, for that purpose only, and not in order to drive out independent carriers.

The Act of 1888, Section 29, gives the railways power to make group rates, that is, to group together places in the same district and to charge the same rate or rates from all stations in the group to other stations outside it, notwithstanding the fact that the distances of stations in the group from the destination point are not the same.

The most important case is that in which a common point of

consumption is supplied from two or more producing points situated at different distances from it. There is a preference if the railway company charges to the more distant places the same rates as those charged to points closer at hand, or a rate raised less than in proportion to the distance.<sup>1</sup> But this preference is not necessarily undue—the public interest may demand it. This has been held to be the case when the effect of raising these rates would have prevented traders the furthest remove<sup>c</sup> from continuing to supply the common market. If a preference of this kind cannot be removed by reducing the rates paid by the less distant centres because those rates are themselves reasonable (or, since the Appointed Day, the standard rate or less), the preference is justified and the parties complaining of undue prejudice will obtain no redress.

Lastly, there will be an undue preference if a railway company in any way prefers, either by its rates or the facilities it offers, its own ancillary undertakings or its agents, or even, in certain cases itself, against independent persons or companies performing the same service. For example, a railway company may not offer lower rates or better facilities to goods consigned to or from its own steamers than it offers to traffic conveyed by an independent line. Nor may a railway company offer its own cartage services any facilities at its stations for collecting and delivering traffic which it does not offer to independent cartage contractors.

It is not only through lower rates that a railway company may create undue preferences. It may also create preferences which are in law undue by a discrimination in the facilities it affords to particular traders. Preference in facilities is treated exactly as preferences in rates, provided that these facilities are connected with the receiving, forwarding, and delivering of traffic. A railway company may be forced to extend to all traders able to show similarity of circumstance a facility it has extended to one regardless of whether the facility in itself is reasonable or not. To plead that this facility is unreasonable avails nothing. The company deprived itself of that defence by conceding the facility to the preferred trader.

<sup>1</sup> The practice of charging rates less than in proportion to distance (tapering rates) has been made general, and legal, by the Act of 1921. The standard charge per ton per mile set out in the Basis of Scale diminishes as the distance increases. See *supra*, pp. 61/62.

## SECTION 7

*Agreed Charges. The Robinson Case. Conditions under which agreements are negotiated. Assessment of charge. What railway and trader gain.*

During 1931 a new form of railway charge was introduced. This type of rate now known as the "agreed charge," has been authorized by Section 37 of the Road and Rail Traffic Act of 1933. "Agreed charges" vary in detail; the principle is that of a charge per ton or per consignment, or even a percentage of the purchase price of the goods carried, irrespective of the distance or the places to which the goods are consigned. This method of charging is new only in that it is not recognised by the Railways Act, 1921.

Agreed charges were adopted mainly to meet road competition. The celebrated case was that of Messrs. Robinson, Oil Cake Merchants, of Bristol. Their agreement with the railway company became a test case, and was carried to the Court of Appeal.<sup>1</sup> Messrs. Robinson, during 1931, were reorganizing their transport arrangements. Part of their traffic was road borne, the remainder, the larger part, still went by rail. The firm desired to have all its traffic under one hand, and was contemplating the purchase of a fleet of vehicles. It was estimated that the average cost of doing their own carrying would be 7s. 1d. a ton. Messrs. Robinson then approached the Great Western Railway Company and suggested that, in return for an undertaking to send the whole of their traffic by rail, guaranteed to be at least 40,000 tons a year, the railway company should grant a rate equal to what it would cost the firm to carry for themselves. The railway company agreed, and Messrs. Robinson were given a flat rate of 7s. 2d. a ton for their oil-cake to each one of 320 stations in a specified area round Bristol. The rates were applied experimentally at first, from 1st December, 1931. The matter was not referred to the Railway Rates Tribunal till 22nd September, 1932, when it was intended to make the agreement permanent.

The agreement as a whole was not placed before the Tribunal. The railway put in the rate of 7s. 2d. as an exceptional rate to each one of the 320 stations. To some of them those closest to Bristol, 7s. 2d. was greater than the standard rate. The Tribunal

<sup>1</sup> *Railway and Canal Traffic Cases*, vol. 21, pp. 46ff.

has no power to sanction rates greater than standard. For payment of these rates the railway company relied entirely upon the goodwill and consent of the trader, since there was no legal power of recovery. To certain other stations the new rate lay between the limits of 5 % and 40 % below standard. The railway could put these rates in at its own discretion, with no further formality than that of notifying the Minister of Transport. But to 208 stations, the rate of 7s 2d. was either less than 5 % or more than 40 % below the standard charge, and the consent of the Tribunal was required. The company thereupon submitted 7s. 2d. a ton as an exceptional rate from Bristol to each one of those 208 stations on oil-cake consigned by Messrs. Robinson.

Flat rates of this sort violated many legal principles of railway rate-making. But as the case came before the Tribunal, it was an application by the Great Western Railway Company for consent to certain exceptional rates. The only questions the Tribunal had to consider therefore were whether this rate of 7s. 2d. to each of 208 stations was an exceptional rate of the sort the railways are authorised to charge by Sections 36-39 of the Railways Act; and whether these rates would assist the railway to earn its standard net revenue.

The Tribunal was not satisfied on either of these two points. Consent was refused both because the rates were not new exceptional rates within the meaning of the Act, and because even if they were, no evidence was led to show that the company would be better off, and therefore closer to earning its standard revenue, if consent were given than if it were withheld.

The Tribunal remarked that "by the terms of their undertaking they (the railway companies) can only make for such services of carriage separate charges for each consignment at the rate of so much per ton per mile for conveyance according to the distance and the class of traffic carried, plus terminals. . . . In the formation of the exceptional (rates) the charges in the standard as for conveyance, terminals, and so forth must be drawn upon and reproduced in the exceptional, but lowered, that is paid for at a lower level. . . . If the standard contains for conveyance a charge based on so much per ton per mile according to distance and class, the exceptional must also contain a charge of a similar nature. This view, which makes the exceptional a miniature counterpart of the standard where the same services are being

rendered by the railway, is supported by a consideration of the disintegration provisions of Section 40." The flat rates on the other hand, were obtained as an average of the total amount paid by Messrs. Robinson for carriage in the course of a year. The factor of charge per ton per mile according to distance was thus obliterated.

The decision was confirmed on appeal. The Court of Appeal pointed out that under Section 40 of the Railways Act, the Tribunal would have had to disintegrate the rates if it had consented to them. In a sample disintegration proposed by the railway company, a higher conveyance charge for the greater distance was only made possible by charging less for terminal services at the more distant station. The work at terminals is the same, whatever the distance. The same charges should have been made for the same terminal work and facilities at all stations. Had this been done, the charges for conveyance, too, would have been the same, though the distances were not, "which," remarked the Court, "is absurd."

In giving the judgment of the Court, Lord Justice Scrutton concluded: "I have considered the basis of the standard rate; the extreme improbability of the Tribunal ever disintegrating the flat rate in the way suggested by the railway company, the fact that the flat rate granted to Messrs. Robinson or anything like it, was only open to traders who had a large amount of existing road traffic to surrender to the company, the obvious injustice of the flat rate to small traders, and the weight of the opinion of an experienced Tribunal which has for years administered this system; in the result I am convinced that the Tribunal were right in holding that a flat rate of this character which entirely ignores distance carried, which fixes for a considerable proportion of the cases covered a rate higher than the standard rate which is irrecoverable at law, and to another considerable proportion of the area covered, a flat rate to one trader only which will prejudicially affect other traders and tend to the suppression of the small trader against the large amalgamation, has no place in law in the statutory system of the Act of 1921. The consideration that, as the railway company admit, they can give no evidence that the flat rate will bring the earnings of the railway company nearer to the standard revenue, also justifies the decision of the Tribunal."

Consent to the rates was thus refused primarily on the legal and technical ground that the flat rate did not conform to the method prescribed by the Act of 1921 for the construction of standard rates, and that, as exceptional rates, these flat rates would have been incapable of disintegration or analysis on the lines laid down in that Act. As the Tribunal themselves said towards the end of their decision, "Dealing with this case as we do, largely upon legal grounds, it is perhaps not necessary to dwell upon all the reactions which a system of flat charges imposed on an area of statutory exceptional charges has, though they have been brought to our notice. The evidence is conclusive that what the railway company had done in favour of Messrs. Robinson has seriously affected the trade of the district, enabling them by undercutting to put the business of other traders in peril."

The flat rate granted to Messrs. Robinson was not the only case in which the railways had granted such an agreed charge to a trader specially to meet road competition, but it was the only one in which the consent of the Tribunal had been asked. After this decision, all similar charges became illegal. A Bill was being drafted at the time to give effect to the report of the Salter Conference of 1932. A clause was inserted in this Bill to reverse the decision of the Court of Appeal, in order to make legal these agreed charges. This clause became Section 37 of the Road and Rail Traffic Act, 1933. The powers conferred on the railway companies by this section are broad. "Notwithstanding anything in the Railways Act, 1921 . . . a railway company may . . . make any such charge or charges for the carriage of the merchandise of any trader, or for the carriage of any part of his merchandise as may be agreed upon between the company and that trader" (Sub-section 1).

Besides the Fourth Schedule and Section 40 of the Act of 1921, which govern the construction and disintegration of railway charges, agreed charges offended against other legal principles of rate-making. It could have been urged (and, indeed, was so argued before the Tribunal) that the agreed charge created an undue preference, and was a breach of Section 90 of the Railway Clauses Consolidation Act, 1845.<sup>1</sup> Section 37(9) of the Act of 1933 specifically exempts an agreed charge from "(i) so much of Section 90 of the Railway Clauses Consolidation Act of 1845 (the

<sup>1</sup> Vide *supra*, p. 75.



Equality Clause) . . . as relates to the obligation of a railway company to make equal charges to all persons under like circumstances: and (ii) so much of Section 2 of the Railway and Canal Traffic Act, 1854 . . . as relates to the obligation of a railway company to accord no undue preference to any person, company, or description of traffic, and Section 27 of the Railway and Canal Traffic Act of 1888, which relates to complaints with respect to undue preference."

Agreed charges require the approval of the Railway Rates Tribunal and the Tribunal must satisfy itself that the objects to be secured by the agreed charge could not be obtained by the grant of exceptional rates. The Tribunal is given wide discretion when hearing applications for approval of agreed charges. "On any application under this section, the Tribunal shall have regard to all considerations which appear to it to be relevant and, in particular, to the effect which the making of the agreed charge is likely to have, or has had on (a) the net revenue of the railway company, and (b) the business of any trader by whom, or in whose interests, objection is made to approval being given to an agreed charge, or application is made for approval to be withdrawn" (Sub-section 8).

The interests of other traders are safeguarded in two ways. Any trader who considers that his business will be or has been injured by an agreed charge, may oppose the application for consent before the Tribunal (Sub-section 5). At any time after one year from the date on which consent was given the Tribunal may be asked to disallow the agreed charge (Sub-section 7): or an aggrieved trader may ask the Tribunal to fix an agreed charge in his favour, his goods being the same or similar to those being shipped under the agreement to which he is objecting (Sub-section 6).

Sub-section 11 directs the manner in which agreed charges shall be published. The practice of the Tribunal has been to require copies of the agreements to be kept at certain stations, where they are open to public inspection.

Section 39 gives rights of objection to coastwise shipping interests, in cases where an agreed charge places coastwise shipping at an undue or unfair disadvantage, or where such rates are inadequate in view of the costs of affording the services for which these rates are made.

The Act became law in 1933, and since then there has been a steady increase in the number of agreed charges. The Act did not require the railway companies to make returns to the Ministry of Transport of the volume of traffic covered by these agreements, and no annual statistics are published. In 1935 a test was taken of the proportion of traffic conveyed at the standard and exceptional rates. This showed that 0.73% of the tonnage of traffic was being conveyed at agreed charges, and that 2.51% of total freight revenue was earned from them. Since then these proportions have undoubtedly increased.

The agreements are drawn up in a standard form. At the head of the agreement there are the names of the parties to the agreement; the railway company or companies and the trader. The next section, Section A, contains the description of the traffic covered by the agreement. In very many agreements the traffic to be carried is the trader's goods outwards, and returned empties inwards. Sometimes empties are the matter of a separate agreement.

Section B contains the stations and places to which the agreement applies. Often the area covered by the agreement is very wide—the traffic may be conveyed from the trader's home station or siding to all stations and depots in Great Britain. If the trader has more premises than one, then more than one home station or siding is specified. In some cases the agreement is effective between specified stations; in others, from the trader's home station to all points in a given area, generally defined by a line drawn through specified places, e.g. all stations and depots south of the Forth and Clyde Canal, or south of a line from Preston to Hull, the intermediate points being named. Where a trader's premises are in large towns, London or Birmingham, and so on, the point of dispatch may be any station in the town area. If a trader has more than one plant, two or more points of dispatch may be included.

The traffic in Section A is sometimes divided into two (or more) parts, when the places to which each part of the traffic is consigned are different. In Section B, there are corresponding schedules of points between which the traffic is to be carried, each schedule referring to one or other of the parts into which the traffic has been divided. Suppose a trader manufactures a product put up in tins, and makes his own tins. His traffic might

be the tinned product outwards and tin-plates inwards. These two sections of the traffic will be recorded in Section A of his agreement. In Section B it will be stated that the tinned goods are to be conveyed, e.g., from the home station to all points in Great Britain, the tin-plates from a specified list of Welsh stations to the trader's home station or siding.

The next part of the agreement states the amount of the charge which has been agreed. This is usually quoted as so much per ton, with a minimum size of consignment, generally 28lb. Other bases of quotation are common. The rate may be quoted as so much per package, so much per unit, or, as in the case of Messrs. Woolworths' agreed charge, as a proportion of the purchase price of the goods, ex works. A rate per package is usual in agreements covering traffic by passenger train. A maximum weight for each package is commonly specified, or an average weight. Where the traffic is divided in two parts in Section A, it is quite usual to find only one rate quoted per ton for the carriage of all the traffic.

The next part of the agreement contains a list of nine or ten conditions. In the first of these the trader undertakes to ship all his traffic by rail. This is the consideration the railway company receives in return for the agreed charge. If the trader operates through any subsidiary or affiliated companies, then he may also undertake to send the traffic of those companies by rail. There are one or two fairly standard exceptions to this condition. Traffic shipped coastwise is excluded in many agreements, presumably to avoid opposition by coastwise interests intended to enforce the protection assured by Section 39 of the Road and Rail Traffic Act, 1933. Traffic delivered locally from the trader's premises in his own existing vehicles is often exempted, and, in the case of London traders, traffic delivered within a radius of 15 miles from Charing Cross. Sometimes the local traffic removed from the agreement may be confined to the limits of the town in which the trader's works are situated, or within a stated distance of his works. Other exceptions are less usual. Traffic delivered to one consignee mentioned by name, or to one or two particular places, may be excepted. Traffic collected in a consignee's own vehicles, or traffic shipped carriage forward, is often excluded, though there is generally a provision that such traffic shall not amount to more than a stated percentage of the whole,  $2\frac{1}{2}\%$ , 5%, or  $7\frac{1}{2}\%$ , as the case may be, or that such consignments shall not be

of a greater value than £2 or £3, and so on. Urgent orders may be exempted, and so may export traffic shipped through certain ports, sometimes only export traffic delivered to the consignee ex works. Where the agreements quote a rate per package, that part of the traffic normally sent parcel post may be excluded.

The remaining stipulations are the conditions of carriage, whether owner's risk, or company's risk, whether the agreed charge includes collection and delivery, use of containers or not. Traffic is usually conveyed under the Standard Terms and Conditions of Carriage. The agreed charge is generally subject to any modification which may be made in the standard and exceptional rates by the Railway Rates Tribunal upon an application for a general increase or decrease of rates under Section 59 of the Railway Act, 1921.

The conditions also state that the agreed charge shall not include any special charges which may be incurred on traffic shipped to exhibitions. The agreement covers only freight to the mainland port in the case of traffic shipped to islands off the mainland of Great Britain. Agreements with Scottish traders, however, generally include sea freight to the Western Isles and the Highlands. Lastly, the trader is required to notify the companies of any material change in the character of his business or in the nature of the traffic carried under the agreed charge.

A very common period for an agreement to remain in force is one year, though some agreements are only negotiated for six months at a time. No definite time-limit may be specified at all; the agreement may be terminable at three months' notice by either side at any time after the expiration of one year from the date when the agreement was concluded.

The charge itself is calculated in this way. The total railway charges paid by the trader in any given period, generally some representative month, and the costs of that part of his tonnage which was road-borne in the same period are added together. The first set of figures, the trader's bill for railway transport, can be obtained from the railway company's own books. For the second, the bill for road transport, the company must rely upon information given by the trader himself. The sum is divided by the total tonnage consigned, by rail and by road. The quotient, the average cost per ton paid by the trader on the whole of his traffic, is the figure upon which the agreed charge is based. The

actual sum fixed by the agreement may be the same as the average, but the bargain is generally struck at a lower figure. The railway company are obtaining the whole of a particular trader's traffic—a valuable consideration. The trader himself requires some inducement before he will undertake to ship all his traffic by rail, since he is tying himself to the railway and foregoing the advantage of competitive road service. In some cases, the charge agreed upon may be greater than the average, as for example when the railway company undertakes to perform some additional service for the trader in connection with his traffic. Some traders may obtain a quotation from a road haulier for a service similar to that offered by the railway company under the agreed charge, in order to obtain a competitive figure.

The choice of a particular month as representative is important. A trader's traffic may contain a greater proportion of high-classed freight at one time of the year than at another, or his goods may generally be carried longer distances at certain seasons. A trader gains if he can get accepted as "representative" a month in which the proportion of low-classed goods in his freight was unusually high, or a month in which, on the average, his traffic is conveyed the shortest distance.

The agreements are concluded by the head offices of the railways and are signed by the Secretary of the Railway Clearing House on behalf of the railway companies concerned in them. The local station staffs do no more than collect the necessary information, filling in a questionnaire covering two foolscap sheets. This, and any other relevant information, is remitted to the head office of the railway company, which thereupon decides what figure shall be quoted as the agreed charge. This is offered to the trader as a basis for negotiation.

The advantages of agreed charges to the railway companies are obvious. Control is gained over the whole of the traffic of traders who enter into such agreements, at a rate not much, and possibly not at all, less than that the trader is already paying, on the average, on all his traffic. The advantages to the trader are possibly not quite so great. He may obtain some reduction in his total transport bill, but at the expense of confining himself to use only railway services. The chief attraction for the trader is that all his transport is done by one concern, the railway company, and he is saved the trouble of working with railway companies

and many road contractors, or of operating his own fleet. The agreed charge is the average of his total transport bill, rail and road. He retains the advantage in rates secured by using road transport, when it was cheaper than rail, before the agreement was made; but he may lose the benefit of reductions of charge which might be made subsequently.

Another, possibly less important consideration for both parties is the saving of clerical labour. Under the ordinary system of railway charging, by standard or exceptional rates, each consignment of traffic has to be separately invoiced, a source of considerable expense both to the railway company, who has to draw up the invoices, and to the trader who must receive them. With an agreed charge, accounting is made simpler and cheaper. Only daily, weekly, or monthly totals of tonnages or consignments need be prepared. The total transport bill can be calculated by multiplying tonnages or consignments by the agreed charge, a much less expensive process.

An agreed charge which takes no account of distance induces a trader to extend his usual area of distribution, since a long haul costs no more than a short one. Any increase in the average length of haul of a trader's traffic is a loss to the railway, which would have earned more by carrying the trader's goods over the longer distances at their ordinary standard or exceptional rates, rather than at the fixed agreed charge. In order to protect themselves, the railway companies keep a record over test periods of what the trader would have paid had his traffic been charged at ordinary rates. When the agreement is being renewed, the new agreed charge may be higher than the old, to take account of any increase in the average distance the trader's traffic is now being carried.

A charge for transport fixed without regard to distance permits a trader to increase his range of distribution and to compete in markets hitherto placed out of reach by high transport costs. Equally those traders in whose normal area of supply the more distant markets are situated can obtain agreed charges which permit them in turn to extend into the home area of the first trader. Each trader is now competing in areas which before he could not reach; and each is subject to competition in his home district where before he enjoyed an advantage from his proximity. As the agreements fall due for renewal, the railway can demand

a higher charge on the ground that each trader's goods are now being conveyed for longer distances. Against this increase of charge, the trader has not always the remedy of returning traffic to road and giving up the agreement. The operation of the licensing system for road vehicles is such that his old contractors may not be there, and none will have taken their places. When a contractor loses business, as he does when traffic is recovered by the railway through an agreed charge, he may be unable to convince the licensing authority that there is a continued need for his services, and his licence may not be renewed.<sup>1</sup>

Increase in distance is not the only change leading to higher agreed charges. A rising proportion of more highly classed merchandise can have the same result. Messrs. Woolworths' agreement is a case in point. The agreement was concluded in 1932, and is revised each year. The charge in any year is calculated from the sum which the traffic carried in the preceding year would have cost if that traffic had been charged at the standard and exceptional rates current in 1930. This sum is expressed as a percentage of the purchase price of the goods carried,  $12\frac{1}{2}\%$  is deducted, and the result is the agreed charge. Thus in 1932, the charge originally agreed upon was fixed at  $3\frac{1}{2}\%$ . The revised charge for 1933 was  $3\frac{3}{4}\%$ , and the charge for 1934,  $4\frac{1}{4}\%$ . In this case, too, a fall in the prices paid by Messrs. Woolworths to their suppliers increases the agreed charge in the year following, since it is based on the proportion between the rates in force in 1930 and the purchase price of the goods.

## SECTION 8

### *Offered Charges.*

There is one other class of railway charges, known as "lump sum" or "offered" charges. These are quoted for services which were not foreseen by the Railways Act of 1921, and are used for factory, works, and farm removals. The railway company undertakes to remove a whole factory, farm, or works from one site to another—plant, machinery, office equipment, stores, stock-in-trade, or livestock—and quotes a single price for the job, a quotation which may also include charges for dismantling at the old

<sup>1</sup> Vide *infra*, p. 147.

site and re-assembling at the new. The price is estimated from what the job will cost the railway, and not from the sum of the standard and exceptional rates at which the several items would be charged when consigned separately. Besides removals and other big jobs of a similar nature, these rates are sometimes quoted to obtain a large consignment of goods, say 20 or 30 tons. "Offered" charges are not always based upon the classification or upon the standard and exceptional rates. They may depend solely upon the circumstances of the particular consignment of traffic and the competition for it. Such rates as these can only be quoted for the isolated and non-recurrent consignment; otherwise an undue preference would be created.



### CHAPTER III

## The Constitution of Road Charges<sup>1</sup>

1935 to 1938

*Charges by road determined in a competitive market on the basis of cost plus profit. All hauliers do not make the same charge; nor do they offer the same service. Secrecy and good-will important causes of variation in rates. The cost of conveying goods varies and traders require different facilities. Back-loads at low rates partly caused by defective clearing system and partly an inevitable characteristic. Freight clearing houses.*

THE enquirer who embarks upon a study of railway rates and charges finds the way clear before him. Railway rates are published; and rate-books can be inspected by the student. There is no secrecy about the price of railway transport, and railway officials are ready to give full information.

The road transport business is very different. Hauliers are not required to publish their rates. Charges can only be had upon application to individual hauliers who may be unwilling to divulge the details. Even when actual rates are obtained, these relate only to traffic carried by the haulier concerned. The ordinary haulage firm is very small, and there is no guarantee that rates charged by one haulier are the same as those being asked by others.

Comprehensive information about road haulage charges, comparable with that available about railway rates, could be obtained only by an official census; to collect it is a task far beyond the capacity of the individual investigator. Private enquiry can do no more than find out what rates are being asked by some hauliers over some routes, and draw whatever conclusions are suggested by these samples.

Enquiry shows that road rates and charges are usually lower than the competitive railway rate. They are distinguished from railway rates by two important characteristics. First, there is no classification like the General Railway Classification of Mer-

<sup>1</sup> The reader is asked to remember that this and subsequent chapters present an account of the road haulage business as it was immediately before the outbreak of war in 1939. The present tense is maintained throughout for the reasons which are explained in the Foreword.

chandise. Second, road rates and charges are not uniform. Charges for carrying the same kinds of goods between the same places vary from one haulier to another. One may ask a price not far short of railway rate, while another may offer to do the same job for a sum hardly enough to cover his out-of-pocket expenses. These different rates exist simultaneously; and there are good reasons which account for the divergence. The service offered by different hauliers varies considerably. The haulier asking the higher rate guarantees delivery at the opening of business next morning. He has a large organization and maintains breakdown vans to guard against loss of time through accident. He insures cargo for its full value, and provides covered vans for the traffic, if this protection is required. He may run a regular nightly service over his route, and has a reputation for reliable service. The haulier who asks a lower rate may be offering service of a lower quality. He may not work regularly into that town; he may have just carried a load in and now be looking for a load to take back. He may be quite unknown to his prospective customer, who cannot be certain whether he is reliable or not; and his vehicle may not be insured for loss or damage to cargo. His ability to get the goods to the destination at the time required is supported by nothing but his own profession; and the possibility of delay caused by mechanical breakdown must be estimated from the outward appearance of his vehicle.

These considerations are in the minds of traders when they engage the services of road hauliers. To many, the offer of a lower rate is not an inducement, since to their minds the cheaper rate implies a less reliable and less punctual service. The haulier asking the lesser charge will not get their business.

Secrecy is an important cause of non-uniformity of rate. As in any competitive industry, quotations of price can only be obtained by direct enquiry or as the result of a canvass. There are many road transport concerns, and most of them small. Each haulier cannot hope to canvass every possible customer, nor can each trader hope to get in touch with every haulier. There is no central office which publishes road charges. Lack of knowledge about rates asked by competing hauliers, combined with known differences in the quality of the service provided, has made goodwill an important characteristic of the trade. Wherever there is goodwill there are to be found variations in the price asked by

different suppliers for similar service. It is not unusual to find that, between the larger towns, the rates quoted for the most expensive service may be double the rates charged for the cheapest.

The usual basis upon which a road haulier calculates the rate is "cost plus profit." Cost includes the expenses of running the vehicle required to carry the load together with additions out of which to provide for overhead charges and other items not connected with the actual operation of the lorry. "Price leadership" is a well-marked characteristic of the road haulage business. The rate fixed by the larger and better-known concerns becomes the basis of the competitive quotations of the smaller hauliers. It is a grievance of the larger hauliers that their rates are continually undercut by the "small fellow." The big haulier feels he has a responsibility to maintain an "economic" rate—one which covers all costs, direct and overhead, and leaves a reasonable margin for profit. The smaller operator is accused, often quite justly, of keeping no accounts. It is claimed that he does not know what it costs him to operate his services. He makes no allowance for depreciation and renewal. The rates charged may not cover even the less obviously direct costs of repairs and tyres. Attempts are made to remedy this deficiency by educating the small haulier. The technical press, for example, publishes tables of operating costs as a guide to the rates which ought to be charged for the different types of vehicles.<sup>1</sup>

"Rate-cutting" is not confined to the small haulier. There are certain large firms who are notorious for this. The conduct of these firms is considered the more reprehensible (by those whose rates are being cut), since they cannot plead, with the small offender, that they knew no better.

When a competitor is cutting the rate, there is always the question whether the lower rate shall be met, or whether the affected traffic shall be allowed to go. Besides the odium attached to the practice of "rate-cutting," even in retaliation, hauliers do not wish it to become known among their customers that they are prepared to reduce a quotation. Many operators prefer therefore to keep up the rate, and rely upon good-will and their reputation to retain traffic. This is often successful. Well-known

<sup>1</sup> See for example the Tables of Operating Costs of Motor Vehicles, which were published annually by the *Commercial Motor*.

contractors admit that though traffic may be lost by refusing to reduce the rate below what is regarded as reasonable, the loss is only temporary. Traffic tempted away by rate-cutting often comes back, since the service provided by the rate-cutter is inferior. The traffic is not always regained; the trader may not be willing to admit to his old contractor that his judgment in accepting the lower rate was wrong. Rather than confess his mistake openly by returning his custom, he will prefer to seek out some other, but equally expensive and reliable contractor.

Road rates are not the same for all classes of commodities, even though there is no classification. Some commodities cost more to handle or to carry than others, either because they occupy more space per ton in a lorry or because they do not load well with other commodities. Naturally such commodities must pay a higher rate. The practice of road hauliers varies. Some hauliers quote their rates at so much per ton of "general merchandise." There is usually a limit to the "bulkiness" of the traffic which is accepted, 60, 80, or 90 cubic feet per ton being the maximum taken at the general rate. Traffic lighter and more bulky must either pay a higher rate or is accepted only by special agreement. Certain traffics, too, those for example which are easily damaged, or are difficult to handle or to load, such as glass, timber, or machinery, may be excluded from the operation of the general scale, and special rates are charged. Other hauliers have two or more scales, one for normal traffic, another higher scale for bulky, easily damaged or difficult traffic, and possibly a third scale, lower than the normal, for heavy and undamageable traffic which packs well, and requires no very immediate dispatch.

Lastly, there are many hauliers who have no regular schedules of rates at all, but who quote separate rates for all the commodities they carry. The practice of these hauliers is interesting, and illustrates well the differences between railway rate-making and road charging.

The chief considerations taken into account when assessing the rate per ton charged upon any particular traffic are first the cubic capacity of the commodity. This governs the weight which can be loaded into a van. Second, there is the ease or otherwise with which goods may be carried as part of a mixed cargo. Brass tubes are an example. The space occupied per ton is great, and tubes are awkward to load. A lorry of 6-ton capacity can carry no

more than 4 tons of tubes. The rate charged for this consignment of 4 tons must be enough to cover the cost of operating a 6-ton vehicle. The rate on tubes, therefore, will be 50% more than the rate on brass ingots, of which 6 tons can be loaded on a 6-ton truck. Other goods cannot be loaded on the tubes because of the danger of crushing tubes out of shape; nor can tubes be loaded on top of anything else for they bend under their own weight, unless supported uniformly over the whole length. A haulier's vehicle designed to carry 7 or 8 tons must run half empty when carrying brass tubes. With 2 tons of this freight no more than 30 cwt. or 2 tons of other cargo can be loaded. It costs no less to operate a wagon with half a load than one full. To make brass tubes a paying traffic the rate charged on a small consignment must compensate for the fact that the lorry cannot be loaded up to its full capacity.

Butter illustrates the principle from the other end. Butter is not a bulky product. It is put up in tubs, which pack compactly. Other commodities may be loaded so that all the space in the vehicle is used. Butter loads well and "mixes well," as the hauliers say, with other goods. It is carried for a relatively low rate, because the vehicle can be loaded with this and other goods to full capacity.

Soap, non-ferrous metals in ingots, nuts and bolts in cases, nails in sacks, rope, and similar commodities are carried for relatively low rates by road, because they can be loaded with other goods without risk of damage. Tubes, sheet metal, castings, hollow-ware, hardware, and tea will be charged higher rates. They may be damaged if loaded indiscriminately with other things (tubes, sheet metal, and hollow-ware); or care is required to prevent breakage (castings and hardware); or the goods may be injured by exposure to strong smells, or the weather, as in the case of tea. Finally, the highest rates of all will be charged for large pieces of machinery, big castings and boilers, a single unit of which occupies a whole lorry; bicycles and motor-bicycles, which take up a large space in proportion to their weight, and leave little room for anything else; and internal-combustion engines which, though small, cannot be packed closely with other goods because of the risk of damage, nor on top of them because of their weight.

Besides the bulk of the goods and the weight which can be loaded,

risk of damage is important. A higher rate is asked for the more fragile or damageable commodity as a premium against this risk.

Whether a particular road haulier distinguishes carefully in his rates between different commodities or whether he has one rate applicable to all general merchandise within certain limits of bulk, it is a universal custom for contractors to vary their charges per ton according to the size of the consignment. Many hauliers quote a series of rates—10-cwt., 1-2 tons, 2-4 tons, 4-6 tons, and so on, up to consignments of 10 or 15 tons. Some hauliers may make the interval as little as one ton at a time; others only distinguish between 1-, 2-, 5- and 10-ton lots, or have two divisions, less than 6 tons and over 6 tons. But whatever the practice of the individual, all agree in charging the lower rate for the larger consignment. The difference in rate is considerable. The rate per ton on a consignment of 1 to 2 tons may be 30% to 50% higher than the rate charged on a 10-ton lot, or even more. The larger consignments are taken at the lower rates because of the lesser costs of collection and delivery. A consignment equivalent to a lorry load is collected from one trader and delivered to another. The lorry is loaded to its capacity with one call for collection only; it is unloaded at one drop. If consignments each smaller than this are to be carried, a vehicle must go out to collect from several consignors the lots required to make up a full load, and there are the same number of deliveries at the other end. It is an expensive business to send out heavy trunk wagons on two rounds during the day, once to deliver parcels of goods the lorry brought in the night before, the second time to collect a load to carry out in the evening. Making calls to pick up or set down freight takes a great deal of time, and, owing to the limitation of hours by Section 19 of the Road and Rail Traffic Act of 1933, a separate set of drivers must be employed for this purpose. With small lots of traffic, not more than one or two tons in weight, many calls have to be made. It may be necessary to maintain a separate fleet of vehicles for town collection and delivery, and tranship the goods to, or from, the trunk wagons at the depot, an additional expense.

It is the custom of road hauliers to specialise their services. Some confine themselves to large lots of traffic; others take the smaller parcels. Many hauliers, handling "tonnage" business, as it is called, often refuse consignments of less than one or two

tons in weight. The minimum may be even higher. Consignments of less than a ton—5 or 10 cwt.—when they are taken, are charged at a very high rate per ton, 25 % or 30 % greater than the 1-ton rate, and most hauliers set a high minimum charge per consignment. But whatever the method adopted, the end reached is the same, and hauliers specialising in heavy consignments do little business in lots of less than one or two tons. Other haulage concerns go to the other extreme and take nothing but small parcels, consignments, that is, below 5 cwt. or often less than 3 cwt.—90 % of the consignments handled by one such operator are less than 3 cwt. and 25 % less than 7 lb. The rates charged by “parcels” carriers like this are very much higher than those of the “tonnage” men.

Large consignments are generally quoted “one collection, one drop.” No very elaborate collection and delivery service has to be maintained, for a lorry-load cannot contain more than a few “large” consignments. To make a success of a parcels service, a comprehensive and therefore costly collection and delivery system has to be organised. A single consignment of parcels may mean a dozen separate deliveries, a lorry-load fifty or sixty collections and possibly twice as many deliveries, since a consignment of parcels may be addressed to more than one consignee. To carry large heavy consignments requires heavy vehicles, of a size which would make the collection, conveyance, and delivery of small parcels a most expensive business. That particular task can be performed more economically by lighter vehicles, which could not be used for carrying heavy consignments. A parcels service, and a business in large consignments, require quite different organisation and equipment for the most economical operation. For this reason not many haulage concerns will be found who combine the two. There are exceptions, but fairly rigid specialisation is the rule.

Other reasons for variations in the rates quoted by hauliers are differences in the quality of the service provided. Road transport contractors operating regular services generally give overnight delivery. Goods are collected in the late afternoon and delivered at their destination during the next morning. Some customers, however, demand collection and delivery precisely at stated times, those, for example, who make certain parts in one factory and assemble them, or otherwise complete the article, in another at

some distance. The output of the factory where the parts are made may be only just enough to keep pace with the assembling plant. There may be no opportunity to accumulate any stock, or the manufacturer, for reasons of economy, may not wish to do so. A road haulier who undertakes to collect traffic as it is completed in one factory and deliver it to the other exactly at the time the parts are required, charges a rate higher than he would get for his ordinary overnight service. His vehicles and equipment must be completely reliable, and that means frequent overhaul and renewal. On such a job, new vehicles are often placed in service each year. The contractor may be required to give this undertaking before he is given the business. He must also put on his best drivers, and probably finds it pays to offer a bonus for punctual running, all of which is costly.

A mass-production plant demands a service punctual to the second. In many such plants, the parts for assembly are stored on the conveyor belt itself. No other stock is maintained. As the parts are received in the factory they are unloaded off the vehicle and on to the belt. To do otherwise requires two handlings instead of one, which is expensive. The carrier in this case must have vehicles at the receiving dock ready for unloading exactly at the time the appropriate part of the conveyor belt comes round. To ensure precision the purchaser often specifies the contractor the suppliers shall employ, rather than allowing them to choose.

A manufacturer may have to deliver a certain consignment before the haulier's usual time of arrival at the consignee's works, or to a point off the haulier's usual route. A machine may have broken down, and a new one may have to be delivered and installed before the opening of business the following morning. To get this done, a lorry must be chartered specially, and there may be no possibility of arranging for a return load. The rate asked will be great enough to cover the whole cost of running a lorry out and home. The cost of this sort of service generally amounts to 1s. a mile, or more, depending upon the size of the lorry required.

Where no great punctuality is required, the rate is correspondingly low. There are some traffics, such as flour and oatmeal from the ports, timber from the mills, and bricks and tiles from the kilns, which are always available, in large consignments, lorry-loads, or as much as a haulier can carry, and are to be had



at any time a haulier wishes to pick up a load. Large stocks of these goods are carried in the consuming centre, and delivery is never a matter of any very great urgency. Such traffic as this is generally only taken by hauliers from other towns who have been unable to obtain any other traffic and have the alternative of running back empty.

It is not usually the case that the tonnage outward and inward from one town to another is equal in volume. If the tonnage normally consigned one way is larger than that passing the other, the general level of rates will be higher in the direction of the greater flow, lower in the direction of the less. For example, there is a considerably greater volume of tonnage consigned outward from Birmingham than inward. As a result, some road hauliers operating between Birmingham and London, Birmingham and Liverpool, or Manchester, carry traffic inwards at lower rates than they are charging on traffic outwards. Just before the war (1939), 20s. to 25s. a ton was a good average rate from Birmingham to London in 1-ton lots or over. But the rate from London to Birmingham was often less than 20s., even as low as 14s. or 16s. Rates from the ports are often lower than the rates charged on traffic to the ports; ports generally have a bad reputation for rate-cutting, owing to the large number of hauliers who find themselves in seaport towns with no regular traffic home.

The carriage of traffic at low rates on the return journey is known as "back-loading." The practice is not confined to freights from the ports, it is quite general. It is the result of certain well-marked features of the trade—the large number of small firms, the high proportion of owner-drivers, and the complete lack of a comprehensive system for clearing traffic. Regular return loading can only be ensured by hauliers who have established connections in the distant towns, and even his contacts are confined to consignees to whom outward loads have been delivered. This is not a very satisfactory method of getting return freight. Consignees may not normally ship traffic back to the town whence they draw their supplies. Even if they do, they may not have loads to consign on the days when the haulier is delivering. In a large enough circle of consignees, this difficulty may be overcome. But a good deal of time can be occupied in canvassing a large number of possible customers, and it is an errand which may be fruitless. In any case, if the haulier is in a

small way, even more if he is an owner-driver, the number of consignees to whom he is accustomed to deliver is necessarily small. To ensure a flow of traffic in the return direction, regular and adequate in quantity, a haulier must maintain a collecting depot in the distant town, an office and freight canvassers, and possibly even a fleet of vehicles for town cartage. The equipment and organisation are expensive. None but the larger businesses can afford it, or have the ability and resources to establish and maintain it. The lack of any machinery for clearing traffic, the absence, that is, of any central agency in each town for collecting traffic from traders, and distributing it among the hauliers, leaves each man to get return traffic for himself. Only the larger men are able to devise a satisfactory system. The small man and the owner-driver must take what they can get, and are forced to accept any rate which is offered.

Hauliers who have no depots in distant towns have to rely upon their drivers to get loads for the return journey. A driver with no base to work from is in an exceptionally weak bargaining position. The traffic carried outwards has been delivered in the morning, the driver has spent his statutory period of rest away from his vehicle, and sets out on his rounds to collect a load in the afternoon. If he is not immediately successful in getting a good load from one of his usual connections, he will be prepared to bid down the rate, even to the point of asking for traffic at a price to be fixed by the trader. Very low rates indeed can be got from a driver on the point of starting for home, often no more than the direct cost of running the vehicle, or even less. The lorry has to be driven back, and to carry a load at almost any rate the driver is offered is better than running back light : drivers indeed prefer a load, since a laden vehicle is the more easily handled.

For this reason not all hauliers require and some will not permit their drivers to search for a return load if freight cannot be had at a "remunerative" rate. A great deal of time can be wasted in this way. It pays a haulier with good connections at home to get his lorry back to the garage ready for an outward freight rather than permit it to remain in the distant town seeking back loads at these low rates.

Many traders do not accept tenders such as these, and refuse to put out traffic at rates which they know cannot be "remunerative." But not all traders are so scrupulous. Some are accused

of holding up the offer of traffic till very late, when drivers who are still without a load can be forced to accept almost any rate the trader is prepared to pay. It is said of some traders—those with a considerable quantity of not very urgent traffic—that they hold a “Dutch auction” at the close of business each day. Drivers from out of town, who have not yet obtained a freight, assemble at the loading dock and are asked to bid against each other for loads, a device which no doubt reduces a trader’s transport costs but gets him a bad reputation among hauliers.

The low rates at which back-loads are (sometimes) conveyed are a grievance to the regular haulier, and, if a large enough volume of traffic is affected, “back-loading” can inflict real injury. As far as the low rates arise out of the exploitation by the trader of the weak position of the small haulier who cannot afford to maintain out-of-town depots, the complaint of the regular haulier is legitimate. His charges, in themselves reasonable, since they do no more than cover the costs of operating the service, with a margin for profit, are in fact being undercut by rates which are “uneconomically” low. The “cut” rates do not cover all the costs of providing and maintaining a regular service, and, if charged consistently, would not yield revenue enough to allow a haulage concern to remain permanently in business. The justice of the complaint may be admitted, but the grievance has no obvious and immediate remedy. Back-loading at cut rates is likely to remain an established feature of the industry as long as the small haulier and the owner-driver remain the majority and have no assured means of getting loads at good rates for the return journey. But however much the organisation of the road transport business might be improved in these respects, there will always be some “back-loading,” if the business remains freely competitive. The haulier who carries from one town into another whence there is no regular traffic in the reverse direction will always be constrained to accept a very low rate on any return freight he may get. So will the operator who, not himself a regular carrier, obtains as a relatively isolated occurrence a consignment which is in some way special. The abnormally low rates back in these cases are offset by the abnormally high rates which must be asked on the outward freight. But traffic obtained in this way does not interfere with the business of the contractor who carries between towns where there is a good flow of traffic

in both directions. The one does not compete with the other.

The need of the owner-driver, and of the small haulier with no depot outside his home town, for some agency to which he can turn with assurance to receive return loads at reasonable rates is met to some extent by businesses known as "freight clearing houses." A clearing house has wide connections among traders and hauliers. It accepts consignments, which are then given to the hauliers for delivery in the distant towns. A clearing house may be that and no more, or it may own some vehicles and do some carrying on its own account. Quite often the clearing house may be a large haulier who has more traffic than his own vehicles can carry, and must therefore hire other contractors to carry for him. The hauliers working for the clearing houses, sub-contractors as they are called, are generally owner-drivers and the smaller hauliers. Firms with depots of their own do not need to turn to the clearing house for traffic, except when loads are temporarily short. The larger operators sometimes refuse to do so. The owner-driver and the haulier owning no more than two or three vehicles, often work exclusively for clearing houses, carrying traffic outward for one and inward for another.

It was the practice of clearing houses to charge the sub-contractor a commission on all the business they give, out of which they cover their expenses and gained their profit. This commission varied from 10 to 15 %—a usual figure is  $12\frac{1}{2}\%$ . Most clearing houses are honest and reputable establishments. They accept traffic from the trader at reasonable rates, comparable with those charged by the regular carriers, and pass it on to the haulier, deducting no more than their legitimate commission. But some are accused of many malpractices. They are said to deduct a commission greater than the  $12\frac{1}{2}\%$  or whatever it is they profess to charge. They do not inform the sub-contractor of what rate they themselves obtain from the trader, but offer the driver much less, and keep the difference themselves. They do not tell the drivers of loads till it is time for the man to start, and he is desperate for freight. Owner-drivers and small hauliers often have not the money for necessary supplies, and the clearing house may be the only source of credit. Clearing houses often supply tyres and petrol, but some charge retail prices where they have bought wholesale themselves. They may advance money for journeys, but at 5 % for the period concerned, and it may be

as short as a week. When the driver returns, the rate he has got from the clearing houses may be less than the sum he owes them. He must borrow again, and undertake another journey to extinguish the debt. Clearing houses can get small sub-contractors hopelessly in their debt. Despite their known bad reputation for sharp practice among hauliers in general, they are able to remain in business by these devices for quite long periods. At the same time, they are getting the work done by their unfortunate sub-contractors for much less than any regular haulier must charge. An unscrupulous clearing house can cut rates wholesale and inflict a serious and wholly unmerited injury on the hauliers who compete with them. The fault, however, is not wholly one-sided. Not all hauliers deal honourably with the clearing house which employs them. Some are known to go direct to the trader whose goods they are carrying as sub-contractors and offer to do the job at a lower rate, allowing the trader to keep the commission charged by the clearing house.

Malpractices of this sort, the reader should be reminded, are not characteristic of all clearing houses, but only of the disreputable minority. It is unfortunate that the deservedly bad reputation of these few should have besmirched the name of the institution as a whole, so much so that some hauliers, even among those who would gain thereby, will not solicit a clearing house for traffic at all. The lack of an organised machinery for clearing traffic was a principal handicap impeding the development of a road transport service on a country-wide scale. Properly constituted, a system of well managed clearing houses could have performed this important and essential function. The owner-driver and the small haulier could have been provided with the traffic they need, at rates at least as good as they could get themselves, if not better; and charged no more and possibly even less, than they would have to pay to provide like office facilities for themselves. Clearing houses can cover a wider area than any single haulier however large, and, had they been able to arrange through connections and joint rates, a road transport service might have been instituted as comprehensive geographically as that furnished by rail.<sup>1</sup>

<sup>1</sup> The Ministry of War Transport is Road Haulage Organisation established in 1943, acted as an accepting agency and performed many of the functions of a clearing house on a nation-wide scale. The Organisation was wound up in August 1946. A recent scheme for the co-ordination of road and rail includes the proposal that the road haulage business should provide area organisations with functions very similar to those performed by clearing houses. See below p. 235.

## CHAPTER IV

### Competition between Road and Rail in the years before the War (1939)

#### SECTION I

*RATES.—Road charges the lower for valuable goods, rail for the cheaper merchandise. Road hauliers work only the dense traffic routes and carry the larger consignments. Light traffic routes and the smaller loads remain to the railway. The special case of "small" traffic. Road transport competes for traffic for which costs of carriage are low in relation to railway rate.*

RAILWAY rates and charges have been fixed, under authority of Part III of the Act of 1921, at the level which it was hoped would enable the four amalgamated companies "with efficient and economical working and management" to cover their gross costs and earn in addition the standard net revenue. Road charges depend upon the cost of operating road vehicles, and the profits which can be earned in an imperfect but actively competitive market.

The statutory principles upon which railway rates are assessed are laid down in Section 29(2) of the Railways Act of 1921, ". . . all other relevant circumstances, (the) value (of the goods), the bulk in comparison to the weight, the risk of damage, the cost of handling, and the saving of cost which may result when merchandise is forwarded in large quantities." It is evident from what has been said in the preceding chapter that road charges depend upon the same basic considerations, with the important exception of the first, the factor of value. The value of a commodity is one of the main factors which determine whether any merchandise shall pay a high railway rate or a low one; but it has no part at all in determining what the road charge shall be. A road haulier considers the bulk of goods in comparison to their weight and charges more for those commodities which load less easily into his lorry. He charges more for easily damageable goods and makes an allowance for large consignments. But he does not increase the rate just because a consignment is made up

of goods of a greater value.<sup>1</sup> With this one exception of value, the statutory principles which govern railway rates explain equally well current rate-making practice among road hauliers. Of them, the question of the bulk of the goods is probably the most important, just as after the value of the article this consideration is the most important factor in determining a railway rate.

Railway rates are based on the value of the goods conveyed as well as on the costs of carrying them. Road charges depend only on the latter. Consequently road charges are *less* than railway rates for the *more* valuable goods, and *more* than railway rates for the *less* valuable. Valuable high-classed merchandise pays a rate for transport by rail which is higher than the costs of conveyance by road. Cheap low-classed commodities are carried by rail at a rate which is less than road costs. Road haulage contractors are able to compete, and compete successfully, for all those goods, and for those goods only which are relatively valuable and have therefore been placed in the higher classes of the *G.R.C.* The road business is deprived of the opportunity of carrying the cheaper goods which go in the lower classes. It is for this reason, and for this reason only, that road transport takes only the valuable high-classed merchandise, while the railways are left undisturbed to carry the heavy, cheap, and bulky freight—coal, minerals, and heavy merchandise. Road operators do not refuse this traffic because it is unprofitable in itself to move from one place to another. They cannot compete for it because the railway rate is less than the costs of carrying these goods by road.

The conclusion is confirmed by enquiry among traders, hauliers, and railway officials, and by the complaints of the railway companies and their apologists. The diagrams<sup>2</sup> present data comparing transport charges by rail and road.

<sup>1</sup> Unless the higher value carries with it an increased cost of handling, of insurance, and so on.

<sup>2</sup> See p.282 for diagrams—These data were obtained by enquiry at first hand. Fig. 2 is drawn by plotting road rates per ton (and, where they have been obtained, the competitive railway rate) against length of haul. Standard railway rate for certain classes is also shown. The general level of road charges is obtained by drawing a smooth curve (M F) through the arithmetic mean of the road charges, taking the mean of all charges within blocks of ten miles, 11–20 miles, 21–30, 31–40, and so on. Rates quoted between London and Birmingham have been omitted, but the average charge on this traffic has been

The margin of competition between rail and road—the point at which road competition became generally effective, it appears from these diagrams, corresponded approximately to Class 7 of the *G.R.C.* The general level of road charges fluctuated about the standard rate for Class 7. For the shorter distances, rates by road on the whole were a little less, for the longer, somewhat higher. Broadly, the traffic for which road and rail are competing is the goods classed as “General Merchandise,” Classes 7-21. The other traffics, coal class, and “Minerals and Heavy Merchandise,” Classes 1-6, remain the monopoly of the railway.

This is not to say that all General Merchandise is now the preserve of the road haulier, nor that road hauliers do not carry any traffic in the lower classes. The railways still have a large volume of traffic in General Merchandise,<sup>1</sup> and some at least of the traffic in “Minerals and Heavy Merchandise” is road-borne. Even coal is conveyed by road, though only for short distances, as for example from Cannock Chase into Birmingham. Whenever full loads can regularly be obtained out and home, operating costs are brought down, and hauliers are able to compete for the lower classes of traffic. Pig iron and raw steel—Class 5—is conveyed by road when back-loads of scrap are to be had. A great deal of road-

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included in the average for the block 101-110 miles. The curve is broken where data were comparatively scanty, and solid over distances for which more information could be obtained. The first piece of solid line, from 70 to 120 miles, includes the traffic into and out of the Midlands from London, from South-East Lancashire, and from the Yorkshire industrial areas; the second piece, traffic between London, and Lancashire and Yorkshire, and between Birmingham and the North-East Coast. This accounts for the flatness of the curve, since heavy traffic makes for economical operation and consequently relatively low rates. This diagram shows that road charges rose in relation to railway rate as the length of haul increased, and that the general level lay above and below the standard rate for Class 7.

Fig. 3 is based on one traffic route—London and Birmingham. The volume of traffic passing is particularly great, and the relation between road charges and railway rates shown on this diagram illustrates the conditions of the major traffic routes. Road charges and the competitive railway rate have been plotted against the class in the *G.R.C.* in which the goods are placed. Standard rate, from Class 1 to 20, between London and Birmingham, is included for comparison. The general level of road rates is obtained by taking the arithmetic mean of all charges at each class. Road charges did not rise markedly, as railway

<sup>1</sup> See below, pp. 111., for the explanation of this phenomenon.



stone—Class 2—is carried by hauliers because the facilities offered by rail are not very suitable; quarry and site may be remote from stations or sidings. Bricks—Class 5—travel long distances by road, mainly because costs of handling and risks of breakage in transshipment are high. Bricks are loaded in and out of wagons and trucks two at a time, thrown from hand to hand. But these are exceptions. The broad conclusion is not destroyed, that road competition is serious only for the traffic in General Merchandise. Traffic in other lower classes of goods is not yet much affected.

That there should be some freight for which road and rail are competitors, and some in respect of which one or other has the monopoly, is to be expected, since each offers special advantages for particular traffics. But that the division should be such that road operators can, and did, compete successfully only for goods at present classed as General Merchandise—Classes 7-21—while they cannot attempt to convey either coal or minerals and heavy merchandise—Classes 1-6—clearly depends upon the statutory classification, the schedule of standard charges, and the current exceptional rates. That road hauliers could carry as cheaply as they did is a function of their costs (which in turn are partly determined by fiscal policy), and their operating efficiency under

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rates do, from the lower classes to the higher. The charge on goods in the upper classes (15-18) is somewhat higher than the average for the lower classes. But if the very high road charge in Class 16 and the two in Class 18 are omitted (and all three are for commodities which are peculiarly difficult to transport)<sup>1</sup> the general level of the remaining rates on more normal traffic in these classes was not more than a shilling greater than the rate on lower-classed goods. This diagram confirms the conclusion that great density of traffic leads to low rates. Comparison with Fig. 2 shows that 21s. (the average road rate between London and Birmingham) is less than the general average for 110 miles.

Fig. 4 is similar to Fig. 3. This diagram shows how the rates of hauliers who quote their charges on size of consignment, irrespective of the nature of the goods carried, are related to (standard) railway rate. Two scales of road rates are given, one representing the scale of the most expensive hauliers, the other those who had the lowest charges. Since both classes of haulier were carrying the same goods over the same route (London to Birmingham), the difference between the two is an indication of the imperfection of the market, and of the difference in the quality of the service given by one haulier and another.

Fig. 4 could be reproduced for any other major traffic route worked by hauliers who base their charges on tonnage alone.

<sup>1</sup> This is also true of the three rates in Classes 19 and 20.

conditions of active competition. But the fact that this level of road charges corresponded to the standard rate for Class 7 depends upon the legal forms prescribed in the Act of 1921 for the determination of railway rates—the classification which divides goods among twenty-one classes chiefly on the basis of their value ; and the schedule of standard charges fixed by the gross revenue the railways required to earn to cover their costs and yield their standard net revenue. General Merchandise is carried by road because the haulier can convey these goods at a cost less than the rate the railways are entitled, and required, to charge. Coal, minerals, and heavy merchandise remain the preserve of the railway. The haulier is deprived of the opportunity of competing for this traffic because the rail rate is less than the costs of carriage by road.

The schedule of standard charges is a mileage scale, and there is only one schedule applicable to all railways and all lines of railway. The rate per ton per mile diminishes as the distance increases, but—and this is the important characteristic—the standard rate is the same for all hauls of the same length, no matter what may be the operating costs of the route over which the traffic passes. Though the standard is everywhere the same for all equal mileages, the costs of working traffic over a given distance vary from one route to another. Thus where costs for any reason are high, the standard charge for that particular haul is relatively low. Where costs are low, the standard charge is correspondingly high.

A large and regular traffic passing between two big centres clearly costs less to carry per ton than an irregular and light traffic between two country stations the same distance apart. A regular traffic can be handled with a minimum of idle equipment and empty running. Return loads can always be relied upon or arranged in advance. A light and irregular traffic means that rolling stock must stand idle when the traffic is not passing, and as likely as not be run back empty, an expensive business. Yet the two traffics, the one cheap to carry, the other costly, are charged at the same standard rate per ton. The greater number of exceptional rates on the routes between the towns and in the industrial areas where the volume of traffic is greatest has done something to remedy this state of affairs. But the standard charges on routes where traffic is light have not been raised to offset

the introduction of new exceptional rates where it is heavier. Railway rates in this respect are based on a principle which disregards cost and this characteristic of their structure once again governs the distribution of traffic between road and rail. Road operators concentrate on carrying over those routes and between those places where there is a great volume of traffic passing constantly. There costs are low, and railway rates relatively high. Hauliers are not to be found on the minor routes where traffic is least, because operating costs are high, and railway rates are relatively low.

Enquiry confirms this conclusion. Road services are operated regularly only between the big towns and busy areas. Road hauliers only carry as a general rule to places whence return loads are to be had. Some operators, it is true, can always be found who will carry wherever goods may be consigned. But if the destination is away from a main traffic route and holds out small hope of a load home, a very high charge is made for the service. A trader whose works are situated in a small town, or in a rural area, may find great difficulty in getting the services of road hauliers at all, unless he can offer a traffic both out and home, large and regular enough to be attractive. Again, though there may be ample road services into and out of a large town, traders situated a little distance from it, though in the same industrial area, do not easily obtain road transport for their goods at a reasonable rate. This is particularly the case if the trader's works lie in a direction away from that in which the goods are to be conveyed. Even traders in an intermediate town between two big centres may not always find road transport available—the lorries may be full when they pass through. It does not pay a road operator to compete for traffic unless he can be reasonably assured of full van loads each way. For any service which cannot offer so much the contractor charges a rate equivalent to the costs of running his lorry out and home. Such a charge is likely to be greater than the railway rate. Unless road transport has some important compensating advantages, the railways retain this business.

Most road hauliers cater only for the large consignments, a lorry-load at a time. Even those who run regular nightly services do not always carry the smallest consignments. Many hauliers have a fixed minimum, others do not readily accept lots of less than 5 cwt. or half a ton. There are a few hauliers who do not

the railway rate is correspondingly too high. Traders who have large and heavy consignments to deliver commonly send by road. Those whose goods go in small lots use the railway. Firms employ road transport when they have large quantities of goods to deliver, but their lighter lots are rail-borne. A trader shipping goods to one, or a few, of the larger centres, uses road; another trader, who has a country-wide distribution, does most of his carrying by rail. A trader's heavy and regular traffic along one route goes by road, the small irregular parcels to other points by rail. Traders situated in the big towns and larger centres use road to carry their traffic to other large and important towns, and give traffic to secondary and unimportant destinations to the railway. Some traders, indeed, consign traffic in bulk by road to a rail-head, and there give it to the railway for local distribution. A case brought up in proceedings before a Traffic Court reduced the present principles of railway charging to an absurdity. It was found that a road haulier was carrying freight in lorry-loads from one town to another. At the terminal point the traffic was given to the railway to deliver in the town itself and throughout the surrounding district up to a radius of 20 miles or so.

Road competition with the railways was "unfair," but not because the road haulier used a highway maintained by the public, while the railways provided their own permanent way; nor because road haulage wages were lower than those earned by railwaymen. Road competition was "unfair" because the railways, by law, must charge rates which are higher than road costs for some classes of merchandise and lower for others; rates which do not make allowance for the differences in the cost of working traffic over one route compared with another, and rates which discriminate less between the large and the small consignment than road charges do. The results of such a competition are inevitable. Road transport takes that traffic for which costs by road are low in relation to railway rate; the large consignments and the full loads to big centres whence a load back can always be obtained. The railways are left with the traffic for which the railway rate is low compared with cost by road, small consignments, traffic to the minor centres from which a return load cannot always be got, and freight to remote areas generally.

The road haulier is not taking the "cream" of the traffic when he competes only for the high-classed merchandise. High-rated

traffic is not necessarily the most paying traffic. Remunerative traffic is freight for which costs of operation are low compared with the rate charged. No figures have been published from which the relation of costs and rates could be estimated for different classes of railway traffic ; but the haulier is certainly taking the best paying traffic when he runs only along the heavy traffic routes and competes only for the larger consignments. These are the traffics for which costs are low and railway rates in comparison correspondingly high.

To take measures to increase by anything less than a penal amount the taxation imposed on motor vehicles, or the wages which operators must pay, is no remedy. The level of the haulier's costs might be raised, but it will leave the " unfairness " of the competition untouched. It will still be the case that road charges are based on costs, though these are now higher than before, while railway rates disregard cost. To remove the " unfairness " and place road and rail on an equal competitive footing, road charges and railway rates must be made on the same set of principles. Either the road haulier must be required to apply a classification of goods by value and make his charges on that principle, as the railways do, or the railways must leave the value of goods out of account when fixing rates and follow the current practice of road hauliers, who make cost the basis of transport charges. The latter solution is the simpler to administer—it has the additional recommendation of being economically the more justifiable.<sup>1</sup>

## SECTION 2

*SERVICE.—Road transport and the railway compete also in service. Reasons commonly advanced by traders for preferring one service to the other.*

The question of rate, the fact that road transport is cheaper than the railway or vice versa, usually dictates the choice of the trader; but there is a balance of other considerations to be taken into account. These are included under the broad head of " service." Some traders, indeed, say that this question of service is the predominant factor influencing their decision.

<sup>1</sup> See below Chapter X Section 4 for an account of American experience in similar circumstances.

In the opinion of the trader, the service provided by road transport is better than that given by railway in certain important respects. First, and most important, there is the question of time. Most traders maintain that road offers a more certain and a quicker delivery. Road hauliers are more to be relied upon to deliver the morning after dispatch. With road transport, traders are able if they wish to give customers a definite time for delivery. That road contractors are the more reliable time-keepers is an opinion very generally held, and traders attach great weight to this quality. The railways are said to afford a good service, that is, overnight delivery, on the trunk routes, but it seems that a good deal of time is lost if traffic has to be interchanged between the companies. Traffic forwarded from one railway to another is apt to lose a day in transit, or even more, if the journey is across and not along the trunk routes. Even when the railway can get goods to the destination station by the next morning, a great deal of time is often lost in local delivery. This is particularly so in London. Traffic conveyed to London by one railway and consigned to a part of the city in the area of another must be transhipped from the forwarding to the receiving company for delivery to the consignee. This transshipment is often the cause of long delay. Railways are not always the slower. From the small towns and the secondary centres, railways often provide more rapid service into large urban areas, particularly if the smaller place lies on a main line.

The hours at which a road contractor collects and delivers can be made more elastic than those of the railway. It is customary to dispatch road vehicles on the trunk journey at about midnight. Traffic can be collected up to a very late hour, without risk of missing the night service. But goods trains obviously cannot all be dispatched at the same time. The railways must collect in the early afternoon, since their first trains leave in the early evening. It is no doubt true that later collection can only be important in the case of the specially urgent consignment. Nevertheless, this is a "service" upon which the trader sets great store.

Road transport provides for the emergency job; when, for example, an order is received which must be delivered immediately. A special train cannot very well be chartered, but a lorry can be specially hired. A road vehicle can also be held back for

goods which are being prepared for shipment. To hold back a train would disorganise the entire railway service. This is particularly useful when goods are for export. A haulier running to a port can delay his departure by an hour or two and still reach the dock before the boat sails. If the goods are not ready when the train is due out, both train and boat are missed.

Some instances have already been given of traders who require goods to be delivered to the minute, at a specified time; for example, a mass production plant working on an assembly line. No railway could provide a service as punctual as this, and no railway would undertake to do so. Time-keeping of this order can be offered only by a road haulier who makes it his chief business.

A throughout journey by road reduces the number of times which freight must be transhipped. Goods rail-borne must first be loaded into a cart or van (unless the trader has a private siding) and transhipped at the railway depot into the truck. At the destination, this double handling is repeated. Frequent transshipment is no disadvantage if the goods can withstand damage. But for goods which are fragile, and for goods which are difficult to load and unload, such as large pieces of machinery, there is a distinct gain in saving two handlings. Goods once loaded into a road vehicle can remain untouched to the destination. At each end, loading and unloading can be carried out under the supervision of the trader. This is the case only if the trunk vehicle is sent to collect or deliver goods—a very general practice. Some of the larger hauliers tranship at their depots. The vehicle which collects and delivers may not be the one which is to convey the goods on the trunk journey. Contractors who do this are giving up part at least of the improved “service” which road has to offer. But a trader can always arrange with his contractor to have the trunk vehicle collect and deliver his goods if the nature of his traffic makes this a convenience. Except in the case of traffic consigned from one private siding to another, or traffic shipped in containers, a railway cannot offer this facility.

The manner in which goods consigned by railway must be packed is extremely elaborate. Goods sent by road need generally be packed with much less care. Elaborate packing is expensive to provide and heavy to convey. The weight charged is the weight of contents plus packing, and the whole consignment is

charged at the rate fixed for the contents. There are many goods for which the weight of packing required for rail transit is greater than the weight of the goods themselves. Road transport saves all this. Goods can often be loaded into a road vehicle unpacked, or in no more than the cardboard boxes or other light wrappings required in any case for storage. Sent by rail, a heavy outer wooden crate is required. The saving in the cost and weight of packing is sometimes greater than the difference between the road charge and the railway rate, and can be the main inducement to a trader to send his goods by road. The same economies can be gained by rail, but only if a container is used for which an extra charge is made. Nor is a container always suitable; the particular consignment may be too large or too small.

Railway packing requirements have been relaxed, and experiments have been made with a much lighter corrugated cardboard outer case in place of the wooden crate. This saves cost in many ways, in transport charges, since cardboard is lighter than wood; in labour, since it is carpenter's work to knock the crates together, whereas unskilled girls can assemble the cases; in storage-space, since the cases are collapsible, and do not occupy as much room as timber; and in raw material, since cardboard is cheaper than wood.

It is said that there is less breakage of goods carried by road than by rail. The railways seem to have a worse reputation than the hauliers for breakage and damage to traffic. Not all hauliers insure their cargoes, and in that case there may be no hope of recovery. Compensation can always be claimed from the railway; and it may not be an advantage to incur a less risk of breakage by road if the damage is not going to be made good. But most contractors of repute insure both vehicles and cargoes. When a haulier is insured, claim for damage is met by the insurance company. Some traders maintain that an insurance company covering a haulier meets a claim more rapidly and makes less difficulty than do the railways, who have instituted their own compensation funds.

The balance of advantage in "service" is not always in favour of road. The layout of a trader's works may be such that delivery and dispatch by rail are the more convenient; as, for example, where there is a private siding. Railway trucks are delivered to the siding and unloaded when the trader is ready for them. Empty trucks required for outward traffic are run into the siding



in the morning, and loaded at leisure throughout the day. Trucks can be retained by the trader without charge for one whole day.<sup>1</sup> Within the time of "free demurrage," goods can be left in the truck and the trader save himself warehouse space, if he has more room on his siding than in his plant. A road haulier's vehicle must be unloaded or loaded when and as soon as it arrives. It cannot be left to await the trader's convenience, as a railway wagon can. More, if the haulier arrives for a load after the "normal" working day is over, labour employed to load the lorry will have to be paid at overtime rates, an expensive item which may offset the saving in transport costs.

The business of accounts and the supervision of transport arrangements tell against road and in favour of rail. Only one or, at the most, two railway companies are required to handle a trader's traffic, since each railway accepts traffic to any point on another company's system. To cover the same area of distribution, a very large number of separate road transport undertakings would have to be employed. Each contractor sends a lorry to collect that part of the traffic he is to deliver. The trader's yard or loading dock may not be large enough to accommodate so many vans, and it may be awkward and inconvenient to have vehicles coming in and out throughout the day. By rail, only one or two vehicles need be loaded.

Railway companies, besides conveying goods, provide warehouse accommodation, and let space at a lower rent than similar accommodation elsewhere. It is a usual condition of hire that the goods stored in the company's warehouse shall have been conveyed by rail. Road hauliers are rarely in a position to offer this accommodation—many of them do not have depots outside the home town. Even if they have, the depot is often no more than a small office and a parking lot. This gives the railway another advantage. The haulier has no place to keep undelivered consignments. The railway can store them at the stations.

Hauliers have more opportunity for keeping a check on the progress of individual consignments than railways have. A contractor knows which lorry a given parcel was put on, and he knows, too, which driver is responsible for the lorry and its load, right through to the destination. Goods by railway pass through too many hands for the same personal check to be effective—

<sup>1</sup> Before the war (1939) the time allowed was three days.

carters, goods porters, shunters, and so on—none of whom is responsible for a load throughout its journey. But few consignments shipped by rail go completely astray. The delay may be great, but the railway finds the consignment and makes delivery at last. Delays are less, and lost consignments are fewer by road. But if a haulier does lose track of a consignment, it is rarely recovered, particularly if he is one who employs sub-contractors or operates a through service with connecting carriers. The haulier's personal contact with his drivers enables him to keep the whereabouts of his traffic under review. If the traffic is put out to sub-contractors, or is passed on to other carriers, this personal contact is lost, and there is no ubiquitous if impersonal office to replace it. Lack of office arrangements also prevents the road haulier from accepting goods "carriage forward," a difference in facilities which must give some business to the railway.

The road haulier is small, and the railway large. This means that a haulier can provide a personal attention to his customers which no responsible railway official could give. It means also that if the trader has a complaint, he can bring it immediately and personally to the notice of the haulier himself. It is one of the defects of railway service from the trader's point of view that he never can find the final authority before whom to lay his grievance.

There is less loss by "pilfering" when goods are sent by road, and the rate system of a road haulier is very much simpler than the railway classification. But some traders gave their traffic to rail because they did not think it right that all the best lots should go by road, and only the least convenient be left to the railway. Others shipped by road, rail, and coastwise, not altogether because each was cheapest for its own particular purpose, but because they thought it in the best interests of the trading community, or the nation at large, to preserve each competitor in the transport market. It is not always the case that the supplier and consignor chooses the method of transport which is cheapest or most convenient for him. Customers often insist on delivery by rail or road, according to their own circumstances, and the supplier may have no alternative but to fall in with the customer's demands. A case in point is the motor trade. Firms themselves engaged in the manufacture of motors and their accessories have been known to refuse goods which have not been carried to their works by road.

## SECTION 3

*PRIVATE FLEETS.—Advantages a trader secures by the operation of his own fleet measured by service more than cost. A private carrier's costs less than those of the public haulier only in limited circumstances.*

Discussion so far has considered only the public haulier, the contractor who carries the goods of others for hire. The vehicles owned by the public haulier are the minority; at least three-quarters of the total lorries licensed are owned by traders who use them to carry their own goods for themselves—private carriers. No records are kept by the authorities of the purpose for which lorries are used; but the predominance of light vans indicates that a majority of all vehicles are engaged upon purely local services, retail delivery by shopkeepers for example, bread and milk rounds, and local haulage contracting within the confines of a town. With such services as these, this study is not concerned, since there is no question of competition with railways. But some traders do use their own vehicles to carry their own goods for long distances, and for other purposes in active competition with rail.

Any trader who has a large local market is well served in having his own vehicles to deliver to customers close at hand. This is a service he prefers to undertake himself, even though the costs are greater than would be incurred in putting the traffic out to public carriers, rail or road. Local contractors, nevertheless, are sometimes employed on such work, even to the extent of running delivery rounds for large bakers, wholesale newsagents, and so on.

The circumstances under which a trader can operate a long-distance service more cheaply than a public carrier are limited. It can only pay, that is, cost less per ton, to run a private fleet of vehicles rather than consign by road contractor or by rail, if the trader's traffic is such that he can obtain full loads for his vans out and home, and use his lorries as continuously as hauliers do, running the trunk journey by night and the collection and delivery services by day. Only the trader who ships a large traffic daily to one point, and that a point from which he can return with daily loads of raw material, can reduce the costs per ton of

carrying his traffic below the rate which would be offered by a public carrier.

Some traders, however, are able to obtain from other sources advantages in cost by operating their own fleets. A trader may not need to employ any extra office staff to supervise his transport department, and he may have unused space available for garaging. These two items of cost, important in a haulier's accounts, are overhead to this trader, and need not be considered in any estimate of the costs of operating his own transport service. In an extreme case, indeed, when the area of distribution is generally local, and there is only the occasional load to be delivered at a distance, the cost of the van itself is overhead. Delivery of the load need be debited only with the out-of-pocket expense of running the vehicle, a sum much less than any public carrier could afford to charge.

In individual cases, traders whose circumstances and traffic are such that it pays them to operate their own services can reach very low levels of costs. They are consequently able to carry even the lowest classes of freight at a cost competitive with the railway rate, certainly less than any charge a public haulier would have to ask. Traders placed as favourably as this are the exception and not the rule. The majority of traders are not in a position to operate their own transport services at a lower cost per ton than the public carrier. Unless there are very special circumstances why a private fleet is an advantage, it pays traders better to employ public carriers, either rail or road, rather than to operate their own vehicles. If only for this reason, it appears that the right of the trader to run his own vehicles if he should wish would not, save in the special case, be an adequate protection against over-charging by public carriers acting in combination.

The advantages gained by a trader who does his own carrying are not all to be measured by a lower cost of carriage per ton. A trader may prefer to provide his own transport services even though he secures no reduction of cost. Chief among the inducements to own a fleet of vehicles is the close personal contact between traders and customer secured by having goods delivered in the trader's own vans by his own employees. Drivers employed by the trader act as salesmen and are used for other office purposes; they get to know the customers and deliver the goods when the customer wants them. They take more care than the drivers

of hired vehicles to place them in his works just where he desires. The vans are there to take back any empties there may be or spoilt goods and the drivers can say when they will be round again. Traders who distribute over a wide area gain considerably if they own vehicles. They operate what is in effect a long-distance delivery round of two days or more, a day out and a day home. Empties and goods for repair are picked up at the same time, and the vehicle returns almost as well loaded as when it started. Another consideration, possibly less important but one appreciated by traders, is the prestige attaching to the ownership of a fleet of vehicles. The vans can be kept in a better condition than a contractor's wagon, the drivers more smartly turned out. This advertisement value is difficult to assess, but it is rated very highly.

## CHAPTER V

### Effects of Competition on Rail Traffic and Rates 1928 - 1938

#### SECTION I

*Traffic by rail has lost heavily in proportion to output.*

THE volume of traffic which road competition has diverted from the railway is an unknown quantity. Reliable estimates cannot be prepared from current indices of production, since the component series are weighted by the value of net output. Railway traffic is measured in tons, the sum of gross tonnage consigned, and no account is taken of the aggregate value of goods carried. Quantity of output is recorded in the Census of Production for the four years 1907, 1924, 1930, and 1935, and in the Import Duties Act Enquiries for 1933 and 1934. If there be added the volume of agricultural produce, published in the Agricultural Statistics, the tonnage of Retained Imports, given in the Annual Statements of Trade and Navigation and the produce of mines and quarries returned annually by the Mines Department, a sum representing the total tonnage of output can be obtained. The class of each item of output is shown in the *General Railway Classification of Merchandise*, and separate indices may thus be prepared for the two main divisions of merchandise traffic, "General Merchandise, Classes 7-21," and "Minerals and Heavy Merchandise, Classes 1-6." Coal is included in the table on page 120 for reference.

Assuming there have been no important changes either in the methods of transport or in the degree of urbanization of a population, it may reasonably be supposed that the tonnage of goods transported by railway will be a constant proportion (or multiple) of the tonnage of goods produced. This hypothesis unfortunately, cannot be tested. There are some classes of goods such as coal for which road transport does not compete. Tonnage of coal raised and tonnage conveyed were very closely correlated, never

TABLE 9

## TONNAGE OF OUTPUT AND RAILWAY TRAFFIC.

Indices, 1924 = 100

Year	General Merchandise		Minerals and Heavy Merchandise		Coal	
	Tonnage	Traffic	Tonnage	Traffic	Tonnage	Traffic
1907	83.5	102	...	...	...	...
1913	...	...	109	109.5	107	108
1924	100	100	100	100	100	100
1925	...	...	101	95.6	91	92.4
1926	...	...	76	73.5	47.2	54.5
1927	...	...	112.5	101	94.4	93.3
1928	...	...	107	94	88.7	89.4
1929	...	...	117.5	99.2	99.4	98.7
1930	107.5	87.5	113	88.5	91.2	92.1
1931	...	...	101	72	81.9	82.8
1932	...	...	93	61	78.4	79.7
1933	116.7	69.6	105	66	77.5	78.9
1934	127.5	74	126	77.6	82.6	83.9
1935	127.5	74.4	134	77.5	83.0	83.3

## SOURCES :

*Traffic* : Return of Capital, Traffic Receipts and Working Expenditure of Railway Companies of Great Britain.

*Tonnage* : *General Merchandise* : Census of Production, Import Duties Acts Enquiries, Agricultural Statistics, Statement of Trade and Navigation of the United Kingdom.

*Minerals and Heavy Merchandise* : Statistical Abstract.

*Coal* : Statistical Abstract.

The traffic returns before 1913 recorded only "tonnage conveyed," the sum of traffic consigned by the trader ("tonnage originating") and traffic received from a forwarding company. From 1913 tonnage originating alone is published. In the one year, 1913, both figures were given. A figure for 1907 comparable with the traffic returns of later years is obtained by dividing "tonnage conveyed" in 1907 by the proportion which tonnage originating bore to tonnage conveyed in 1913. Separate figures for "minerals and heavy merchandise" and for "coal" cannot be given before 1913. The two traffics have only been distinguished since then.

For help in the preparation of these indices the author is greatly indebted to Mr. Colin Clark.

varying by more than one or two per centum—but this fact alone cannot support the proposition that there is a simple relation between output and traffic as a whole. Coal is a reasonably homogeneous commodity, and General Merchandise is not.

No indications are to be gained from studying the relation between railway traffic in "Minerals and Heavy Merchandise," and the annual output of these goods. "Minerals" and "Coal" have been distinguished in the railway returns only since 1913. No comparisons can therefore be made of traffics and output of "Minerals and Heavy Merchandise" before the growth of motor transport and after. There are no separate series until 1920, and road transport has since grown from nothing into an important carrier of freight. Railway traffic in minerals and heavy merchandise lost ground steadily year by year compared with tonnage produced. A great deal of this traffic was not, and never would be, road-borne. The produce of quarries, of which roadstone is an important and increasing part, accounts for much of the output of minerals. Roadstone is hardly a traffic which was 'lost' by the railway. It passes by road in any case, not because the road contractor charges less than the railway, but because quarry and site are both remote from a station or siding. Thus the rising proportion of roadstone and other similarly affected goods in the output of "Minerals and Heavy Merchandise" was a factor independent of road competition tending steadily to reduce the share of this traffic retained by rail. Nor were these classes of goods entirely unaffected by road competition. For short distances up to 50 miles or so (and the average length of haul of this freight was hardly more than that), road transport could compete effectively with rail for cheaper and lower classed freight, even down to commodities in Class 5. When the circumstances of the traffic were favourable—full loads out and the certain prospect of a load home—hauliers could carry low-classed goods for less than railway rate over even longer distances. Minerals and Heavy Merchandise were not conveyed in any quantity by road. But the higher classes of these goods, for the shorter distances, and under the most favourable conditions of cost, were a traffic which lay well within the area of road competition.

Though the hypothesis cannot be confirmed, let it nevertheless be assumed that, in the absence of any important change in the



technique or methods of transport, railway traffic and tonnage of output would be closely correlated. Then, since motor transport had not yet become a serious competitor with the railway by 1907, the first year for which an index of tonnage can be calculated, any traffic moved in that year was moved by railway. Canal and coast-wise may be neglected, since the proportion of traffic conveyed by water is very small. The potential railway traffic in General Merchandise which, had there been no competition from the road motor, might have been realized in the years since 1907, can then be reached by raising the actual tonnage originating in 1907 in the proportion of the index for the five census years. If the actual railway traffic in each of these years is subtracted from this figure, the remainder is an estimate, within the limits of the underlying assumption of this argument, of the traffic diverted from rail to road. This is the quantity of traffic which the railways lost by road competition.

The *Railway Returns* give each year the average receipt per ton for General Merchandise. This figure, multiplied by the tonnage lost, shows what additional gross revenue the railways would have earned if the whole of the estimated traffic had in fact been conveyed by rail. The gross revenue lost can be compared with the difference between railway net revenue and the standard net revenue. The comparison is illustrative only since the net railway receipts from that additional traffic are not known.<sup>1</sup>

These estimates include only that part of traffic carried by road which was diverted from the railway. The total traffic road-borne must have been greater than this. Road transport is a new service, it is in some respects and for some purposes an improvement on the railway, and it was certainly cheaper. A new, improved, and cheaper service cannot be provided without creating some new traffic, unless the demand for the transport of goods is completely inelastic—an unlikely condition. But what tonnage of traffic is conveyed by road over and above that which has been diverted from the railway cannot be ascertained—the data are not published, nor even collected. It may be guessed, however, that between 1935 and 1939 the total traffic carried by road operators competing with the railway was at least twice the tonnage which the railway are estimated to have lost.

This index is only intended as an approximate indication of

<sup>1</sup> Table 10.

**TABLE 10**  
ESTIMATED LOSS OF RAIL-BORNE TRAFFIC  
Traffic in General Merchandise, Classes 7—21, only

Column 1. Index of output, 1907=100.  
 2. Estimated potential railway traffic, based on this index.  
 3. Actual railway traffic.  
 4. Difference between 2 and 3, representing estimated volume of traffic lost by rail.  
 5. Average receipt per ton, General Merchandise.  
 6. Estimated loss of gross receipts, product of Cols. 4 and 5.  
 7. Actual railway net revenue.  
 8. Deficit of actual net revenue compared with standard net revenue of £51 millions.

Year	1 Per cent	2 Tons 000	3 Tons 000	4 Tons 000	5 s. d.	6 £000	7 £000	8 £000
1907	100	62,050	62,050	4	—	*	42,200	*
1924	120	74,500	60,900	13,600	16 5	13,200	36,500	14,500
1930	129	86,200	53,200	27,000	17 7	24,700	35,200	15,800
1933	140	87,000	42,500	44,500	17 9	42,800	26,900	24,100
1934	153.5	95,400	45,200	50,200	17 5	46,300	29,400	21,600
1935	153	95,100	45,300	49,800	17 6	46,300	30,900	20,100

SOURCES : Author's own estimates. Table 9, Column 1.

Annual returns of capital, traffic receipts, and working expenditure, etc., of railway companies of Great Britain.

\* Not applicable.

what the railways have lost. It is not put forward as an accurate measure of what railway traffic would have been but for motor transport. The potential increase of railway traffic between 1907 and 1935 may seem large, but not improbably so. In the seventeen years from 1907 to 1924, railways, free from competition, might have increased traffic by 20%; and by 27% in the succeeding eleven years from 1924 to 1935. In the twenty years from 1903 to 1923, the tonnage of General

TABLE 11

AVERAGE RECEIPTS PER TON, AND AVERAGE LENGTH OF HAUL,  
1924-37, EXCLUDING TRAFFIC FREEHAULED

Year	General Merchandise		Minerals and Heavy Merchandise		Coal	
	Receipts	Haul miles	Receipts	Haul miles	Receipts	Haul miles
	s. d.		s. d.		s. d.	
1924	16 5	85.55	5 0	53.53	3 7	43.40
1928	17 9 $\frac{3}{4}$	91.07	5 1 $\frac{3}{4}$	55.19	3 8 $\frac{1}{2}$	41.81
1929	17 6 $\frac{1}{4}$	92.78	5 2	56.25	3 7 $\frac{1}{2}$	41.75
1930	17 7	94.81	5 2 $\frac{3}{4}$	58.64	3 8	42.10
1931	18 0 $\frac{3}{4}$	97.76	5 5	61.10	3 9 $\frac{1}{2}$	44.00
1932	17 10	99.08	5 4 $\frac{1}{2}$	62.66	3 8 $\frac{1}{2}$	42.91
1933	17 8 $\frac{3}{4}$	101.67	5 5	63.79	3 7 $\frac{1}{2}$	41.96
1934	17 5 $\frac{1}{4}$	102.86	5 2 $\frac{3}{4}$	63.00	3 7 $\frac{1}{2}$	42.03
1935	17 6 $\frac{1}{2}$	104.52	5 3 $\frac{1}{4}$	63.83	3 7 $\frac{3}{4}$	42.21
1936	17 3 $\frac{1}{4}$	106.46	5 2	63.91	3 8 $\frac{1}{2}$	43.32
1937	17 0 $\frac{3}{4}$	105.94	5 1 $\frac{1}{2}$	64.01	3 9	43.50
1938	18 2 $\frac{1}{2}$	109.88	5 3	66.01	3 11	43.87

Merchandise conveyed (not originating) by railway rose from 84 million tons to 110 million, or by no less than 31%, a realized increase greater than the estimate on this hypothesis, for any post-war period of equal length.

## SECTION 2

*No great reduction of railway rates.*

This great loss of traffic, amounting finally to as much again as the whole of the traffic in General Merchandise, and an unspecified volume of minerals and heavy merchandise, was not accompanied by any marked reduction in the general level of railway rates.

The average receipt per ton-mile is a quantity affected both by a reduction in rate per ton and by an increase in the average length of haul ; and it can be used as a measure of the general level of railway rates. The receipt per ton per mile for General Merchandise declined steadily after 1928, but at a very slow rate. The average annual reduction was at the rate of 2% only, hardly more than the average annual reduction of 1.6% in the rate per ton per mile charged on "Minerals and Heavy Merchandise," a traffic for which road competition was not nearly so effective.

TABLE 12

A. Average receipt in pence per ton per mile.

B. Receipt for each year expressed as proportion of receipt in preceeding year.

Year.	General Merchandise		Minerals and Heavy Merchandise		Coal	
	A	B	A	B	A	B
1924	2.31		1.13		1.00	
1928	2.346	100.0	1.123	100.0	1.059	100
1929	2.269	96.7	1.105	98.4	1.044	99
1930	2.229	98.2	1.075	97.4	1.050	100.5
1931	2.219	99.5	1.068	99.4	1.039	99
1932	2.161	97.5	1.028	96.3	1.046	100.6
1933	2.097	97.0	1.021	99.7	1.046	100
1934	2.040	97.4	1.000	98.0	1.038	99
1935	2.022	99.2	0.993	99.3	1.039	100
1936	1.960	97.0	0.974	98.0	1.029	99
1937	1.948	99.5	0.966	99.3	1.037	101
Average annual reduction, %		2.0		1.6		0.0

SOURCE : Returns of capital, traffic receipts, and working expenditure of railway companies in Great Britain.

By 1938 at least, road competition clearly had not yet had any marked effect in bringing down the average level of railway rates. Nor could road competition be held solely responsible for the great increase in exceptional rates. 80% is the proportion commonly given of the traffic conveyed at exceptional rates. This is the figure for all classes of merchandise, and it disguises the fact that the proportion of the higher-classed merchandise charged at exceptional rates was still less than the proportion of the lower-classed traffic, the traffic, that is, least affected by road competition.

The proportion of traffic at exceptional rates increased by more in the higher than in the lower classes of goods between

TABLE 13

PROPORTIONATE REDUCTION, STANDARD RATE FOR CLASS 7 COMPARED WITH HIGHER CLASS RATES, AT 80 MILES

<i>Class</i> .. ..	20	19	18	17	16	15	14
Class 7 rate, reduction % compared with higher class .. ..	71	65	59	57	52	51	48
<i>Class</i> .. ..	13	12	11	10	9	8	
Class 7 rate, reduction % compared with higher class .. ..	42	39	34	23	16	7	

SOURCE : Schedule of Standard Charges.

*Note.*—Lacking any detailed statistics of road haulage receipts and costs per ton mile, it is assumed that the average road charge is equivalent to the standard railway rate for Class 7. The table above shows on this hypothesis, the maximum amount by which the competition of road transport might have been expected to reduce the railway rate in each class of goods.

TABLE 14

PERCENTAGE OF TRAFFIC AT EXCEPTIONAL RATES, ONE WEEK IN MARCH

Year	Class of Merchandise			
	All freight	1-6	7-10	10-21
TONNAGE :				
1928	66.71	74.72	64.04	47.72
1930	76.53	84.32	72.94	58.35
1935	83.66	90.24	84.76	63.59
1935 as % of 1928		120	132	133
RECEIPTS :				
1928	50.30	64.61	53.55	40.25
1930	59.83	75.49	64.24	47.98
1935	68.30	83.60	78.24	52.90
1935 as % of 1928		130	146	131

SOURCE : Railway Statistics, No. 194.

*Note.*—No more recent data are available.

1928 and 1935. This indicated that road competition was the most important cause of new exceptional rates. But the largest proportion of traffic charged at exceptional rates was found in the lowest classes, showing that even as late as 1935 there were still potent reasons, other than the diversion of traffic to road, compelling the grant of new exceptional rates.

## CHAPTER VI

### Hindrances to Rate Reduction

*Reductions of rate sometimes made unnecessary by differences of service. But reductions to meet road competition impeded (a) by the law of undue preference, (b) by publicity of rates, and (c) by the great size of railway companies. Two prices for transport now established, and, owing to restriction of road transport, two prices might continue indefinitely. Procedure when a rate is to be reduced.*

AGAINST the inroads which the competition of road transport was making into the traffic conveyed by rail, the companies had two main weapons, the agreed charge and the grant of new and reduced exceptional rates. Agreed charges were becoming increasingly important. This type of charge was authorised specially to enable the railways to meet road competition, and agreements were made generally only with traders who could, and did threaten to send by road.

The bulk of traffic is conveyed at the standard and exceptional rates authorised by Part III of the Act of 1921. The conditions under which railways may grant new exceptional rates are set out in Sections 37 and 38 of the Act of 1921, amended by Section 40 of the Act of 1933. The railway companies may put in any rate not more than 40% below standard, subject only to the formality of notifying the Minister of Transport within fourteen days. Rates more than 40% below standard must receive the consent of the Tribunal. It has been pointed out that the Tribunal, upon an application for consent, considers only the effect that the proposed rates are expected to have upon the company's net revenue; and that from the Appointed Day when this part of the Act became effective in 1928 up to the outbreak of war (1939), the control exercised over railway rates and charges by the Tribunal placed no bar of any sort in the way of a railway company desiring to adjust its standard and exceptional rates to meet road competition.<sup>1</sup> That time was consumed in

<sup>1</sup> See above, Chapter II, section 4.

obtaining that consent cannot itself be claimed a disadvantage when compared with a competitor not so bound since, in practice, new exceptional rates, even when more than 40% below standard, were granted as quickly as the railway company pleased. New exceptional rates may be made effective as soon as the trader asks for them, and quoted "subject to approval by the Rates Tribunal." By grace of the Tribunal consent may be sought after the rate for which application is made has already been put in operation. That consent was forthcoming automatically for any reduced charge which was an exceptional rate of the sort authorised by Part III of the Act of 1921.

There are a number of reasons which explain why railway companies maintained their rates despite the competition of transport by road at a much lower figure. A trader may have an outward traffic in finished goods which could be carried for less by road, his inward traffic in raw materials passing more cheaply by rail. The railway cannot raise rates on the raw materials inwards should the trader refuse to consign the higher rated and higher classed outward traffic by rail; but a company can very well decline to consider applications for new exceptional rates unless it receives its share of the outward traffic.

A railway is often a very large customer of a trader. Orders from the company may be made contingent upon the trader's traffic going by rail, or the trader may fear that diversion of traffic will mean loss of railway orders. A trader doing good business with the railway often considers it "right" that he in turn should be a good customer of theirs. Ethical considerations of this sort are not always decisive, and another, less sensitive, might decide to send by road because the economies to be gained from road transport outweighed the value of the orders placed by the railways. Traders to whom the good-will of the railway company is important are tied; they cannot take full advantage of road service. The railway in its turn retains their traffic without reductions of rate, even though the goods might be more suitably and more cheaply carried by road.

Other reasons are more obvious. Facilities for loading or unloading traffic at a trader's works may make delivery by rail very much more convenient and possibly cheaper than transport by road, the case for example where a factory is built round a private

siding. A trader's premises might be in such a situation that road transport was not to be had ; or his traffic, even though high-classed, such that road hauliers would not or could not give him the service he needed. He might be consigning traffic from a small country town, or require a country-wide distribution direct to retailers in small lots. For traffic consigned or delivered in these circumstances, road transport was not a serious competitor, and the railway would not need to consider or quote specially reduced rates.

Railway companies can thus retain some traffic in spite of relatively high rates. But the more important question is left unanswered—why did the companies choose to keep up the rates, although road transport, charging less, was taking as much traffic as the railways were able to retain ?

One reason might be that the railway company did not consider the traffic worth having at a rate competitive with the road haulier's charge. But it can hardly be supposed that road contractors could regularly afford to take *all* merchandise traffic at rates which were less than the costs of conveying that freight by rail. The important and general reasons why railway companies let the traffic go without trying to keep it by reducing rates are : (1) the legal prohibition of " undue preference," (2) the requirement that railway rates be published and held open for inspection, and (3) the great size of each railway company.

A traffic in a particular freight is, in most cases, shared between road and rail. At any one time, the same sort of goods will be conveyed between the same two points both by road contractors and by the railway. Not all traders, even in the same town, have equal access to road transport. The growth of public carriers has been much restricted by licences, and some traders might not wish to use road in preference to rail, even though the rate is less. That part of a traffic which passes by rail pays the higher railway rate ; the part consigned by road, the (generally) lower road charge. The railway cannot reduce its rates on particular consignments of these goods, nor on the traffic of a particular trader in this merchandise without violating the law of undue preference. The Acts of 1854 and 1888 prohibit railway companies from preferring any one trader to any other in respect of rates or service. This prohibition has been interpreted to mean that all traders dealing in the same



or similar and competitive merchandise, and requiring the same or similar services from the railway company in like circumstances, must be treated impartially. As the law stands,<sup>1</sup> to offer to carry that part of a traffic, and that part only, which is road-borne, at a rate specially reduced to meet road competition, creates an undue preference, to the prejudice of all those other traders consigning the same merchandise in the same circumstances, but who do not ship by road.

If the rates of one trader are reduced to prevent his traffic from being diverted by some road haulier, or to regain it, the railway must in law reduce the rate equally to all traders consigning that particular commodity between the stations in question, regardless of whether those traders are consigning by road or not. The railway rate on this merchandise is usually higher than the road charge, and it may well pay the company to maintain the rates on traffic still rail-borne, allowing that taken by road to go without making any attempt to hold it. The company, indeed, might lose more by reducing the rate on all the traffic in that merchandise still passing by railway at the higher rate than it would gain by retaining, at a lower charge, that now threatened with diversion to road, or by recovering the part which has already gone. This calculation depends upon how much below railway rate the road charge is, upon the proportion of traffic continuing to pass by rail, and upon the tonnage the reduced railway rates are expected to recover. It must often be the case that the larger share of a traffic goes by rail, only the smaller by road. It will not pay a railway to attempt to recover the road-borne traffic in this article by reducing rates; the company will do much better to let the lesser part go by road and maintain the higher railway rate on the larger part it can still retain. This argument applies with particular force if one trader's traffic only is being diverted. A company might lose heavily if it reduced the rate generally on a flow of traffic consigned by several traders just in order to keep or recover the part shipped by one.

If there was danger of wholesale loss of the major part of the traffic, then the policy of maintaining the rate would have been short-sighted. But in many cases it must have paid to keep up the rate rather than have tried by reducing rates to retain those freights which road hauliers were attracting away. Pressure

<sup>1</sup> In 1946.

of road competition brings down railway rates generally only when at least the major part of a traffic is going by road. Thus before embarking on an active policy of rate reduction designed to defeat road competition and recover traffic, a railway management concerned to secure the maximum permitted net revenue, must be convinced that more is to be gained in that way than by the alternative, if passive, policy of carrying the traffic still to be had at the higher rail rates. The revenue earned from that traffic is a reasonably certain, though possibly diminishing quantity. The amount of traffic which is to be recovered by active competition with road is unknown, the rate and probably the receipts undoubtedly much lower. To yield the same net revenue, a very much greater volume of traffic must be recovered at the lower competitive rate than is being conveyed at the time at the higher railway rate.

The cotton traffic in Lancashire was a case in point. Raw cotton is a commodity which is carried in large loads over short distances, from the ports to the mills. Lancashire is a small compact industrial area. Raw cotton, press-packed in bales, loads extraordinarily well. This type of traffic is one well suited to road transport. The railways from the first lost heavily to road, but no substantial reduction was made in the railway rates on raw cotton in the South-East Lancashire area till 1928. In that year, new rates were put in, as much as 80% below standard. The railways regained the major part of the freight lost, and little raw cotton was subsequently moved by road. But it was not until 1928, when cotton traffic by rail had fallen to a very small quantity, that the railway could hope to gain more from the traffic which could be recovered at reduced rates. Up till then, a larger revenue was being earned from the little cotton traffic which still passed at the higher rate by rail, and only then did it pay the railway companies to reduce the rate.

By authority of Section 54 of the Railways Act of 1921, railway rates and charges must be published. This provision of the law reinforces the tendency, which can fairly be ascribed to the prohibition of undue preference, preventing railway rates from being reduced to meet road competition. The railway companies must keep at each goods station a rate-book, in which are recorded all the rates at which traffic is conveyed from that station. Anybody is entitled to inspect this book. A trader may examine

the rate-book and ascertain what rates his competitors are paying. He may compare these rates with his own and as the law intends can make sure that he is not being subjected to any undue and illegal prejudice. But the trader has been able to gain more than this from the right freely to inspect the rate-book. Each and every trader is anxious to get for himself the advantage of the lowest rates the railway is quoting to any station for his class of traffic. A constant pressure was put upon the companies to extend to all members of a trade any favours in rates granted to one, or to a particular group. It is an important function of the transport department of a trade association or a Chamber of Commerce to maintain this pressure and these bodies do not regard it as complete performance of their function to secure for their members no more than the benefit of reductions in rates to which they are entitled by law. They go beyond this and seek as concessions reductions granted to others to which their members have no legal claim. Fortified with the information to be obtained from the rate-book, and their knowledge of railway rates, the traffic experts of trade associations make it their business to ensure that traffic shipped by those engaged in their trade is carried at rates at least as good as those granted to any other similar trade. The transport officer of a Chamber of Commerce similarly expects to see that the traders in his area pay rates at least as low as those granted to the traders in any other similar area.

A lower rate charged to one trader than to another, when both deal in the same merchandise consigned under like conditions and sent between the same two places, creates an undue preference. There is also preference but it will not be "undue" if the same class of goods is conveyed to one point at a rate less than that charged to other destinations much the same distance away. The merchandise is similar, and the conditions under which the goods are carried may be the same. But merchandise in one place is not competitive with similar merchandise in another. Undue preference can only be alleged when the merchandise carried at the lower rate is similar and competitive with that conveyed at the higher. Nevertheless, though there is no breach of the law, a railway company which put in reduced rates to meet road competition for a particular traffic to one town would certainly be faced with demands which

it might be unable to refuse, to concede similar reductions on the same freight to other towns at a comparable distance. There would be no undue preference, since traders shipping to the same point were being charged the same rate. But the goods are similar, and the distances are much the same. More convincing still, the trader could argue that the rates to the two towns have always stood in a certain relation which has now been disturbed. Changes in the relation of one rate to another profoundly affect industrial and commercial connections, many of which may be of long standing.

This principle, that the "relativity" of a rate, the term common in the discussions before the Tribunal in 1923 and 1924, should not lightly be altered, is held tenaciously by the traders and their traffic experts and generally accepted by the railway officials themselves. A hypothetical example will illustrate the point. Hardware might have been carried out of Birmingham to Derby, Nottingham, Stoke, and Gloucester, towns situated at much the same distance away. Suppose road competition to be particularly effective between Birmingham and Derby: suppose, further, so large a part of hardware traffic to be road-borne that it pays the railway company to reduce the rate. But suppose, too, the railway still retains the major share of the hardware shipped to the other towns. On learning of the new and lower rates put in between Birmingham and Derby, traders consigning hardware to Nottingham, Stoke, and Gloucester (who may, indeed, be the same as those who ship to Derby) would demand similar reductions on the ground that the distances are not very different, and that the hardware rates to the four towns have always been much the same. The railway manager would probably have to grant the lower rate to Nottingham, since Derby and Nottingham are so close together. He would find it hard to resist the claim of the traders shipping to Stoke, and might be successful only in refusing to reduce the rate to Gloucester. There he could argue that the traffic was much less, and the industrial situation of Gloucester quite unlike that of the three northern towns; both cogent reasons against extending to Gloucester the favourable treatment which had to be conceded to Nottingham and Stoke. So long as the railway can thus retain the larger volume of the traffic in hardware to all points

other than Derby, but at a comparable distance from Birmingham, more might be lost from the reductions of rates which would have to be granted to those other places than is to be gained by the expected recovery of the road-borne traffic to Derby. The company finds itself in the same dilemma as that which arises from undue preference—it might pay to refuse a reduced rate and let a traffic continue to pass by road without making any attempt to recover it, in order to maintain the higher rates on traffic to other points which remains on the railway and has not yet been affected by road competition.

Railways are very large organisations. Measured both by the area covered by their systems and by the numbers of their customers, each company is a vast concern indeed. It is the same railway company with which the public is dealing in one part of the country as in another, in London, in the Midlands, in Lancashire, and in Scotland. The rates out of one town might be reduced to meet road competition. Elsewhere on the company's system road competition might be less vigorous, and it may pay better to keep up the rate. The company must publish its rates, and traders and their agents can ascertain what new and reduced rates have been put in force anywhere on the company's system. The traders shipping traffic to and from these other less-favoured towns would certainly ask, either in their own persons or through the traffic experts of their trade associations or Chambers of Commerce, for reductions in their rates similar to those granted where road competition is more severe. Legally the demand could be refused and the company might avoid conceding voluntarily any part of it, on the grounds both that there was not the same competition from road transport, and that the traders in the two towns concerned were not in competition. But outright refusal may be expensive. It leaves the unsuccessful applicants with a grievance, and does something to diminish the good-will of the railway company.

Large concerns whose prices are well-known to all interested parties cannot easily have two published prices for the same thing. Even without the prohibition of undue preference, different rates could hardly be charged to two traders shipping the same kind of merchandise: first, because the two rates must be published and are known, and secondly, because the traffic of the two shippers is carried by the same company, even though

the stations between which each consignment passes are not the same and are far apart. The conditions of transit may be similar and any special circumstance affecting only the one traffic is already allowed for in any case by some statutory difference in the rate. Each merchant's freight is given the same service, each is handled by the same employees, and each uses the same equipment. Hence the quite natural demand that one and the same company should not have two published (or unpublished) prices for the same thing, which is to be charged depending upon who requires the service. The situation is made more difficult for each railway company by the fact that all four co-operate so closely that they are often regarded as one organisation. (The position on this account of a nationalised railway undertaking would no doubt be an extreme case). Differences of rate policy, it is true, were to be observed between the four amalgamated companies. These were not important, and showed only that traders would accept differences of treatment from two companies which they would have refused from one alone.

The law of undue preference prevented the companies from quoting competitive rates for traffic they had lost or were in danger of losing, for that law prohibits a railway company from charging lower rates to some traders, those who can threaten road competition, than to others who cannot. The great size of each company and the publicity given to railway rates enabled the trader to extend the principle of undue preference beyond the requirements of the law. The trader insisted, successfully, that the railway companies should give the same rates and the same service to all traders consigning similar merchandise regardless of whether the traders were competing, and notwithstanding that they might be in different towns and shipping to different places.

The unwillingness of railway companies to embark on wholesale reductions of rates to meet road competition is understandable—such a policy would have impaired and not improved railway net revenue. There was still traffic to be obtained at the higher railway rates and the companies could hope to gain more from carrying the smaller volume of merchandise at these rates than they could expect to earn from competing with road for the larger. As a result, there came to subsist side by side two distinct prices for the transport of a particular freight, a higher, generally the

railway rate, and a lower, the road charge and these two prices might have co-existed as long as the railways were able to retain more than a certain minimum of traffic at the rail rates then current. The expansion of road transport was limited by a statutory licensing system. Hauliers were unable to carry all the traffic for which road could offer a lower rate or a more suitable service. The pressure of road competition on railway traffic was thereby diminished, and railways thus kept some traffic which would have gone by road had the necessary vehicles been licensed. This restriction of 'A' and 'B' carriers' licenses, it will be seen in the next chapter, was undoubtedly severe. Had it not been indeed first for the recession of trade and traffic in 1938 which drove the four amalgamated companies to urge their claim for a 'Square Deal,' and second for the war (1939) the existence of two prices for the same service, depending upon whether freight is sent by road or rail, might have become an accepted characteristic of the transport market !

When a rate was finally reduced to meet road competition, the chief things considered were the effect of the new rate on other streams of traffic and the tonnage to be gained or retained. In the course of their daily rounds, railway freight canvassers get an extensive knowledge of the quantities of traffic going by road, and the rates which road hauliers are asking. Many traders will inform the railway of the charges they are paying for road transport, others decline to reveal road charges, while some strengthen their tactical position by quoting road charges fictitiously low. With this information, the railways know the rates they have to meet and the traffics worth regaining. If another company was concerned in the rate, that company must be consulted. Two or more companies could be involved for several reasons. The traffic might be a through traffic, passing over the lines of more than one company ; another company might serve the same route in competition with the first ; or might carry goods for traders competing with those about to receive the lower rate. It was not common for a railway company to quote a rate below the figure at which a road haulier was prepared to do the business, unless a large and valuable traffic was to be had. The usual procedure was to reduce the rate, step by step, till a figure attractive to the trader was reached, and one still profitable to the railway. A number of traders showed

a good deal of sympathy, feeling the railway companies to be ill-used in relation to their road competitors and on this ground were prepared to refrain from driving as hard a bargain as they otherwise might. The railway companies in their turn, could retain or recover this traffic at a rate slightly above the competitive road charge.



## CHAPTER VII

### Economic Consequences of the Road and Rail Traffic Act, 1933, Part I<sup>1</sup>

#### SECTION I

*Statutory conditions under which licences are issued.*

THE first official body to study the question of competition between road transport and the railway was the Royal Commission on Transport, appointed in 1928. Three Reports were presented; the final one on "Co-ordination and Development of Transport" in 1931. Nothing was done to implement the suggestions which the Commission made for the regulation and control of goods traffic by road, but their recommendations for the control of bus and coach traffic formed the basis of the Road Traffic Act of 1930. This Act, among other things, instituted a system of licensing for buses and coaches. • The country was divided up into traffic areas. Three traffic commissioners were appointed in each area, in whose hands lay the issue of licences to operators.

The next step towards control of the goods side was the appointment of the Salter Conference in 1932. The Conference presented an agreed Report. It recommended an increase in the registration duty paid by goods motor vehicles. The increases were justified by elaborate statistical tables, in which annual road costs were allocated between the different classes of road user and the different types of vehicles. The Report also suggested the institution of a scheme of licences for goods motor vehicles, in order to do away with "the evils of overcrowding and unbridled competition in the transport industry."<sup>2</sup>

The recommendations of the Salter Conference were passed into law at once. The Finance Act, 1933, levied higher duties on goods motor vehicles, though somewhat less than the scale suggested by the Conference. A licensing system was imposed by

<sup>1</sup> The procedure described in this chapter was suspended from the outbreak of War (1939) until the dissolution of the Road Haulage Organisation in August 1946.

<sup>2</sup> *Report of Conference on Road and Rail Transport*, 1932, p. 32.

the Road and Rail Traffic Act of 1933, Part I. Part II of the Act made certain changes in the law regulating railway charges. Part III established a Transport Advisory Council to advise the Minister of Transport as and when required.

The Act declares that no person shall carry goods by road except under licence. Licences are divided into three classes—the “A” public carrier’s licence for those who carry exclusively for hire or reward, the general haulier; the “B” limited carrier’s licence for those who deal in and carry their own goods, but who may wish also to carry for others; and the “C” private carrier’s licence for the trader who carries only his own goods.

The period for which a licence is valid is limited. The length of time originally fixed in the Act was two years for the “A” licence, one year for the “B,” and three years for the “C” licence. The Road Traffic Act, 1937, gave the Minister of Transport power to determine by Order the currency of any class of licence. An Order was made in March, 1938, extending the validity of the “A” licence to five years, and of the “B” to two. The currency of the “C” licence remained as before. The Order distinguished between established carriers, those already in business, and newcomers, intending hauliers. An “A” licence, issued for the first time to a public carrier newly entering the business, is valid only for three years, and not five.

Applicants for “A” and “B” licences must state the base from which the vehicles are operated and the purposes for which they are normally employed. Conditions may be attached to a “B” licence restricting the area in which the van may be used, the traffics carried, or the traders on whose business it may be employed. No restrictions can be imposed on an “A” licence. Once the licence has been granted, there is nothing in the Act to prevent those vehicles being used for any purpose or in any district.

The conditions under which a licence is held are set out in Section 8. “It shall be a condition of every licence—

- (a) that the authorised vehicles are maintained in a fit and serviceable condition;
- (b) that any provision (whether contained in any statute or in any statutory rules and orders) with respect to limits of speed and weight laden and unladen and the loading of goods vehicles are complied with in relation to the authorised vehicles;
- (c) that in relation to authorised vehicles the requirements specified

in Section 19 of the Road Traffic Act, 1930 (as varied or amended by any order under that section or by this Act or any subsequent amendment), with respect to the time for which drivers of certain vehicles may remain continuously on duty and the hours which they are to have for rest, are observed ;  
(d) that the provision of this part of this Act relating to the keeping of records are complied with."

" 2. It shall be a condition of every ' A ' licence and of every ' B ' licence that the provisions of Section 93 of the Road Traffic Act of 1930, as amended and applied by this part of the Act, are complied with in relation to the authorized vehicles."

The records which licensees are required to keep under subsection (d) above are prescribed in Section 16—hours worked by drivers or other statutory attendants (i.e. mates in the case of vehicles drawing trailers), and particulars of the journeys made and the goods carried. The licensing authority may release operators from the obligation to furnish returns of journeys made and goods carried, a dispensation which has been granted generally. Doubtless a source of considerable economy to the operator, this concession has been most unfortunate. It has deprived the licensing authority of the opportunity of compiling returns of the volume and distribution of traffic carried by road, and the length of haul. As a result no road transport statistics are available on the goods side beyond the few details of vehicles licensed, reproduced in Tables 2 and 15 and in the Appendix ; and the enquirer is forced to fall back on such unverifiable hypotheses as those employed in Chapter V.

Section 19 of the Road Traffic Act of 1930 regulates the hours during which drivers may be employed, and Section 93 of the same Act imposes the " Fair Wages clause " upon employers of drivers of buses and coaches. (" Wages . . . shall not be less favourable . . . than the wages which would be payable . . . under a contract which complied with the requirements of any resolution of the House of Commons for the time being in force applicable to contracts with Government Departments.") (Section 93(i), Road Traffic Act, 1930).

The limitation of the hours for which a driver or mate may work was reasonably well enforced. The attempt to control wages was not successful. A machinery of voluntary conciliation was established in 1934, but the awards of the Conciliation Board were not recognised as the standard of " fair wages."

On the recommendation of a Committee<sup>1</sup> set up to enquire into the matter, an Act was passed in 1938, the Road Haulage Wages Act, giving the Minister of Labour power to determine wages by Order. The Minister has since issued series of orders numbered R.H.(1) and so on, determining in considerable detail weekly and hourly wage rates according to the character and status of the work and the locality in which the man is employed.

The administration of the licensing system is placed in the hands of the Chairmen of the Area Traffic Commissioners, who were constituted the licensing authority for their traffic areas. Appeal from a decision of a licensing authority lies to the Appeal Tribunal (Section 15). Cases may be brought before the Tribunal either by an objector, or by a disappointed applicant for a licence.

The Act places no limit on the issue of "C" licences to private carriers. Section 6(1.b) of the Act requires the licensing authority to grant all applications received from those who intend to carry only their own goods, unless such a licence has previously been suspended or revoked. Public and limited carriers who were in business during the year 1st April, 1932—31st March, 1933, the base year, were entitled to claim licences. Licensing authorities were directed (Section 7) to grant licences to public and limited carriers for vehicles of an aggregate unladen weight equal to that operated by the applicant in the base year. An "A" or a "B" licence could be claimed for the first currency period only, and only by those who were able to satisfy the licensing authority that they were in fact carrying for hire during the base year.

Section 6(1.a) of the Act gives the Licensing Authority full power in his discretion to grant or refuse "A" and "B" licences. In the exercise of this discretion, Section 6(2) of the Act directs the Licensing Authority to have regard primarily to the interests of the public generally, including those persons requiring, as well as those persons providing, facilities for transport. The Licensing Authority must consider any objections which may be made against the grant of a licence. "It shall be the duty of the Licensing Authority on an application . . . to take into consideration any objection to the application which may be made

<sup>1</sup> *Committee on Regulation of Wages and Condition of Service in the Road Motor Transport Industry (Goods)*. Report Cmd. 5440, 1937.

by persons who are already providing facilities, whether by means of road transport or any other kind of transport, for the carriage of goods for hire or reward in the district or between the places which the applicant intends to serve on the ground that suitable transport facilities in that district or between those places are, or if the application were granted would be, either generally or in respect of any particular type of vehicles, in excess of requirements, or on the ground that any of the conditions of a licence held by the applicant has not been complied with" (Section 11(2)).

## SECTION 2

*Licences granted only if "suitable transport facilities" are not to be had. What must be proved by a new entrant, by an established haulier wishing to expand his fleet, and by one who applies for a renewal of his licence.*

An application for a licence, to be successful, must prove a public need for the services proposed by showing that "suitable transport facilities" are not already available. The Act does not define "suitable" transport facilities, nor have Licensing Authorities and the Tribunal laid down in any general way, what transport facilities are "suitable" and which are not. "We do not intend to attempt to define 'suitable' transport facilities, but it has been necessary for us to consider the question as to what and for whom and when facilities must be 'suitable.'"(1)<sup>1</sup> "Suitable transport facilities," as that phrase is understood by the Tribunal, are those which can give the particular type of service which the trader requires for his goods. "'Suitable' means something more than adequate, and the 'suitability' or otherwise of facilities must be considered in relation to current industrial and commercial conditions."(2) The existing transport facilities in a district or between two towns have not been considered "suitable" if an objector could do no more than show that a service was being provided, and that it was within the capacity of the existing equipment to convey additional traffic, the traffic of the applicant's customers (3).

Transport facilities to be "suitable" must be suitable for carrying the particular goods themselves; and suitable for the

<sup>1</sup> The citations have been collected, and are appended to this chapter.

trader on the occasions when he wants those goods carried (4). Smart, for example, was granted the licence for which he applied because the only evidence offered by the objectors, the Great Western Railway, was proof that a train service was in operation, and that the company had the necessary trucks and wagons (5). The four railway companies lost their appeal against the renewal of Messrs. Bouts-Tillotson's licence because it appeared that the railway service was not suitable for carrying all the goods of Messrs. Bouts-Tillotson's customers on all the occasions on which they required transport (6).

The evidence required to show that facilities are "suitable" or not must come from the trader, the customer of the applicant. He must appear in person in the court of the Licensing Authority to support the application (7). Statements contained in letters have not been accepted if the writers were not there to be cross-examined on what they had written (8). A trader must lead evidence to show that the facilities already existing are unsuitable for his traffic, and that the services the applicant is offering are more suitable. All this had to be proved to the satisfaction of the Licensing Authority and against the cross-examination of railway counsel. Traders have had to show in detail what their traffic requirements were,<sup>1</sup> and wherein the service being supported was superior to that provided by the objectors. The evidence must be specific; general statements by traders that they have had difficulty in obtaining the facilities required owing to lack of suitable licensed vehicles, or that traffic conveyed by existing services has been lost, delayed, or damaged are not admitted as evidence. A trader who has been put to some inconvenience by lack of adequate facilities must give the actual cases in which the services he required were not available. Complaints of inferior service, designed to show the unsuitability of existing facilities, must give details of the particular consignments affected, and state the nature of the failing causing the complaint. Thus traders complaining of delay, loss or damage to their traffic, have been requested to give instances in which specific consignments have been so delayed, lost, or damaged.<sup>1</sup>

<sup>1</sup> Complaints made by traders to Licensing Authorities that on this or that date this or that consignment sent by the objector's services was delayed, lost, or damaged, are accusations against the commercial efficiency of those services. The railway company is the most usual objector, and a good deal of the time of the Licensing

The evidence of the trader has not always been accepted as conclusive. In a number of cases (9) it has been held that the trader has not shown that the railway facilities were "unsuitable," or at least not so unsuitable that a road service was justified. The trader has not been the final judge of what form of transport best suited his purpose. That lies with the Licensing Authority and the Tribunal.

Persons or companies not actually engaged in the business of carrying for hire in the base year, 1932-33, and who now wish to set up as public or limited carriers are "newcomers." Licences are granted to newcomers only if there is a need for the proposed service, a need which is not being met by some existing carrier. To do this an applicant has had to show—

1. That there were persons able and willing to employ him.
2. That the haulage work he was proposing to do could not be done by existing carriers either by road or rail (10).

The proof required has been the evidence of traders who wished to make use of the applicant's services, and who found existing services unsuitable for their traffic, or perhaps not to be had. Those traders who had traffic to give the applicant and were willing to employ him have had to show that they had difficulty in obtaining the services they required from other carriers. This inconvenience may arise from a general shortage of vehicles in the district, or from a shortage of suitable vehicles, as, for example, when a trader's goods must be carried in covered vans and there were only open wagons available. Licences have been granted to newcomers where the applicant has shown that he was providing (or proposing to provide) a special service not given by existing carriers; in Edward's case, because the applicant had the special skill required to load and unload plaster castings, and in Smith's case, because the applicant was proposing to set up a new type of service, a daily parcels service, which did not exist before, and which, the evidence showed, would be a considerable advantage to traders in the district. A licence was issued to Hughes for a vehicle specially adapted for carrying livestock. Without it,

Authority has been taken up in this way, the traders producing instances of consignments delayed or gone astray, the railways then going back to search their records in order, if possible, to explain or justify the failure. See, for example, the proceedings before the Metropolitan Licensing Authority upon the application of Messrs. Bouts-Tillotson Transport for a licence in September, 1936, reported in *Motor Transport* and *Modern Transport*.

there would have been no means of conveying large livestock within an area of eighty square miles (11).

Applications from newcomers for licences have been refused because the facilities provided by existing carriers were at least as good as those proposed by the applicant; because the traffic it was proposed to carry had been "abstracted" from some other carrier, or was being carried by somebody else at the time; because there was evidence that suitable licensed vehicles were standing idle; because the applicant had not first made a serious attempt to hire the vehicles he required. A desire to find employment, even when supported by an offer of traffic, has not justified the grant of a licence unless it could be shown that this service was needed, that is, that the persons who offered the traffic could not obtain the transport they required without this particular vehicle (12).

An established haulier, one already in business and holding a licence, may apply to have his licence varied during its currency by the addition of vehicles. Applicants have had to satisfy the Licensing Authority—

1. That there had been an increase in their own business; or in the business of his customers or of some of them; or in the industries in which they were engaged.
2. That some at least of his customers had been put to inconvenience because the applicant did not have the vehicles needed to serve them (13).

The most usual evidence of increase in a business is the growth of gross receipts. But the mere fact that gross receipts had risen did not justify an application unless it could be shown as well that the increase was due to a general improvement in the business of the industries or of the traders served by the applicant. The Licensing Authority has also wanted to know the time when the applicant started in business, and the number of vehicles he used; any changes there has been in the mileage run and the ton-mileage hauled; in the class of goods carried and the rates charged. The character and mileage of the journeys and the extent to which the periods taken were strictly comparable has been brought under review; and the Authority has had to be reassured that the increase of traffic is not a "false" traffic, a traffic, that is, obtained by charging rates "uneconomical" to the applicant (14).



during the currency of the expiring licence from local service to long distance (18). To lose some customers and to gain others ; to cease carrying some classes of goods, and to make up the traffic with other kinds are not in themselves changes sufficient to jeopardize an application for renewal. But renewals have not been allowed if a complete change had taken place in a haulier's customers, or in the sort of goods carried (19), unless the Licensing Authority has been satisfied that there is a public need for the applicant's vehicles in the new area, or between the new places served ; that his new customers need the facilities offered, or that his services were required for the goods now being carried (20).

Businesses abandoned and subsequently recommenced must prove a need for the services undertaken when business is resumed, notwithstanding the fact that abandonment and recommencement were within the currency of the licence (21). A break in the continuity of a business which, though substantial, does not amount to abandonment, as, for example, on account of illness or fluctuation of trade, has not necessarily caused renewal to be refused, though it is an important factor to be considered in an application (22). But the fact that during the time when a haulier's business was temporarily suspended for whatever reason, his customers got on quite well without his services, has been regarded as evidence that his services were not necessary, and the licence has not been renewed (23).

## APPENDIX

*Hiring; back-loads; purchase of a licensee's business; railway companies as public carriers.*

Besides the precedents governing the grant of licences, the decisions of the Tribunal have laid down principles regulating certain other practices of the road transport business.

### *Hiring.*

Normally the Tribunal has not issued licences for vehicles to replace those which have previously been hired, unless the applicant could show that he could not hire the vehicles he required, because none were available, or at least that he could not hire the particular type of vehicle required. Difficulty in hiring must be chronic—inability to hire during the peak period alone was not

enough. It is often somewhat of a liability for a haulier to be compelled to hire vehicles instead of being able to use his own. For one thing, the sub-contractor comes into direct contact with the customers, and might take business from the operator for whom he worked. For another, the hired vehicles might not reach the standards of maintenance, cleanliness, and smartness of the hirer's own equipment, and the drivers of hired vehicles might not know the business as well as those employed and trained by the main operator. In either case, the good-will and reputation of an operator with his customers might suffer if he has to hire, and cannot replace the hired vehicles with his own (24).

#### *Back-loading.*

A public carrier's "A" licence is an open licence, and the holder is not restricted in any way to any particular district or any particular route once it has been issued, though a change in that respect may become important when he applies for renewal. An "A" licensee is fully entitled to carry goods both ways, both out and home. Back-loading in this sense is a right given by the Act, and has been regarded as a normal part of the public carrier's business (25).

The limited carrier, or "B" licensee, is less free. If he carries only within a limited area, there will normally be no objection to his carrying return loads. But in many cases, traders carrying their own goods accept cargo from others on the return journey. A trader is entitled to a "C" licence to carry his own goods as a right. But he has not been allowed to subsidize his own transport business by carrying for others unless for some reason or other his goods must be carried in his own vehicles, and this part of his business could not be carried on without the help of outside traffic (26).

#### *Transfer of Licences by Sale.*

Licences cannot be transferred from the licensee to another by purchase and sale, but one who buys the business of a public carrier may apply to have licences granted to him in respect of the business which he has purchased. He must show—

1. that the vendor actually had a business as a public carrier at the time of the sale;

2. that the vendor's customers are willing to give that work to the purchaser;
3. that the work can only be done under an "A" licence and
4. that the purchaser required the vehicles owned by the vendor for the purpose of this business. (27)

### *Applications from Railway Companies.*

The railway companies are the largest operators of motor lorries. In common with other public carriers they must obtain "A" licences. The Tribunal has held that the statutory obligation to cart traffic to and from their stations can be carried out more efficiently, if the railways own the vehicles which are required (28), and licences have been granted even though the work could be done by the existing hauliers. Road hauliers operating trunk services can obtain vehicles for local cartage from and to their depots on the same ground, of more efficient operation (29).

These vehicles, licensed to collect and deliver rail-borne traffic, may be used for other purposes, for example, the provision, under powers conferred by the Railway (Road Transport) Acts of 1928, of trunk services by road in competition with other licensed carriers. The protection against misuse of this facility is the possible refusal of a licence if it should be found when application is made for renewal that the railway vehicles have been used "normally" for some purpose other than that for which they were originally authorised (30).

### SECTION 3

*Suitable facilities exceeding requirements against the public interest. Lack of information at disposal of Authorities and Tribunal. Public need proved by inconvenience. A licence justified only by new business. Licences not issued because road charges are lower, or could be reduced. Act and Tribunal are restricting enterprise in a trade where conditions are particularly favourable. The chief losers are the public, and next, the haulage contractors.*

The decisions of the Tribunal depend upon the proposition that "suitable transport facilities" in excess of requirements create wasteful competition. Wasteful competition is not in the public interest, nor in the interests of those requiring or providing

transport and to allow licences for vehicles when "suitable transport facilities" adequate for the requirements are already being provided, is contrary to the intentions of the Act (31). The Tribunal has consequently refused applications for licences whenever and wherever it could be shown that "suitable" transport facilities were in excess of requirements or would become so were the licence to be granted. The Tribunal is the superior Court, and the subordinate Licensing Authorities themselves had no choice but to administer this principle.

The Act itself says nothing at all about wasteful competition. The term is nowhere mentioned. The Act directs the Licensing Authority to have regard primarily to the public interest when exercising his discretion to grant or refuse licences, and requires him to consider any objections raised on the ground that suitable and adequate transport facilities already exist. The Act does not state that facilities in excess of requirements are contrary to the public interest, nor does it direct that licences shall be refused because existing transport facilities are already suitable and adequate. That consequence, upon which rests the whole body of law governing the grant of licences, the renewal of existing licences as much as the issue of new ones, has been drawn out of the language of the Act by the process of judicial interpretation usual in English law. The Act gives the Licensing Authority "full power in his discretion either to grant or to refuse" licences (Section 6(1) (a)). But the discretion of the Licensing Authority has thus been limited beyond the explicit terms of the Act by the decisions of the Tribunal, since he may grant licences only when it could be shown that suitable and adequate facilities did not already exist, and must refuse if such alternative facilities were available.

In order adequately to estimate in any given case whether suitable transport facilities are or are not in excess of requirements, a great deal of statistical information is necessary. Something must be known both about the demand for transport and the supply of transport available; the tonnage of traffic being offered between the points to be served, how many road hauliers are operating over the route, the carrying capacity of their vehicles, how many services they run, and average loads carried. Details of the railway services should be assembled, the proportion of competitive traffic rail-borne ascertained, and so on. Equipped

with information of this sort, and with the evidence of traders before them upon the qualitative question of the type of facilities which are considered "suitable," the Licensing Authorities and the Tribunal might have decided with fair accuracy the main question they were asked to determine, whether in any given case suitable facilities were already in excess of requirements or not. But no such figures have been collected. The Licensing Authorities have not used the power conferred by Section 16(1) (b) of the Act to require records of journeys run and loads carried, although this detail was and is essential to the efficient discharge of their duties, and indeed, to any rational discussion of the future organisation of transport services. The Licensing Authorities did not know what traffic was being carried over any route, nor did they know accurately how well loaded were an operator's vehicles. More than this, they did not even know how many operators, nor how many vehicles, worked between any two points. The "A" licence is an open licence ; the licensee is not confined to any particular route or service and freedom to use a vehicle, once licensed, wherever a haulier pleases, effectively prevented the Licensing Authorities from determining what quantum of road transport was already serving any particular route.<sup>1</sup>

The only information the Licensing Authorities had before them when they were asked to grant or refuse licences, was such knowledge as they themselves might have acquired of the general position in their area, and evidence brought by the applicant to show that his services were in demand and filled a need ; the statements, that is, of one, or at the most, the few traders supporting the application that they could not get the transport they required, or that existing services, although adequate, were unsuitable. On the other side, there was the evidence of the objector that he could provide, or was providing, all the services which the applicant's customers demanded. The objector was usually the railway and in support of their case, the companies put in statements showing that they had trains running at the times required, that they were able to collect and deliver the goods, and could give the quality of service demanded. They

<sup>1</sup> The official Road Haulage Organisation has presumably been assembling returns of capacity loads and journeys as part of its routine business. The Ministry has not yet seen fit to release the figures.

often pointed out that they had carried such traffic in the past, and were indeed carrying similar traffic for others at the moment. Figures were often produced showing by how much railway traffics had decreased compared with a previous date, evidence designed to show that the railway companies had handled in the past a larger volume of traffic than they were getting at the time, and that therefore, their equipment and organisation was adequate and suitable to deal with any additional traffic, in particular that being handled by the applicant for a licence. (32)

The Tribunal has insisted that evidence to show that facilities are unsuitable and service inferior shall rely upon the particular instance and the specific case. This guarded against the specious claim of an applicant based on the complaisant support of customers who wished him well. But a rule of evidence of this sort may hinder a Court charged with the duty of determining whether facilities are suitable or not, and whether suitable facilities as a whole are, or would be, in excess of requirements. The mere listing of specific instances of complaint, however comprehensive, cannot of itself show whether the existing facilities really are inadequate, the existing service really unsuitable. The particular instance is of value as evidence of inadequate facilities or inferior service only if it is known as well in what proportion of all cases the failing has occurred. It is important to know not only that such and such consignments were delayed or lost, but also what proportion of the total traffic consigned was subject to similar delays or losses; not only that on such and such a day vehicles could not be obtained, but also on what proportion of days, and how much of that particular trader's traffic was affected. The Tribunal has never called for data from which comparisons of this sort might have been made.

The public need for a road transport service, by the terms of the Tribunal's decisions, depends upon the inconvenience which is suffered by traders who have to do without that service. In the Tribunal's opinion the running of a road service is in the public interest only when lack of it would inflict positive inconvenience upon someone. (33) Without proof of inconvenience a service has been held unnecessary and therefore against the public interest. Neither the fact that additional road transport facilities would be a convenience to traders (34) nor the fact that a profit might have been made out of operating a service,

have been allowed as evidence of public need. (35)

The Tribunal and the Licensing Authorities adopted a rigorous standard. In most fields of economic activity, it is generally considered that the public interest is promoted, and a service justified if it does no more than provide additional *convenience* for the public. It is not usually argued that the public interest is served only when there is positive *inconvenience* to be removed. In theory, and indeed in practice as well, over a large field, it is still considered evidence enough of public need that a profit should be made from the provision of a service, or the production of a commodity.

Licences for additional vehicles, whether from a "newcomer" or from an established haulier, have been refused if it could be shown that the traffic to be carried by the applicant was or would be abstracted from some other operator by rail or road already providing an adequate and suitable service. The issue of a licence has been justified if the traffic has not been obtained at the expense of somebody else (36)—if it was new traffic (37) or a traffic for which existing facilities were less suitable than those proposed. (38) New traffic grows only if enterprise is first given an opportunity to provide the services required. In all but the exceptional circumstance new business, the demand, does not antedate the provision of the service, the supply. The growth is mutual. A service does not continue to be supplied unless the demand exists. But, equally important, the demand remains potential, visible only to the credulous second sight of enterprise until the new business which is the demand has been called into existence by the provision of the required supply. New traffic, no matter how strong may be the demand, cannot show itself as ton-miles of transport until the service needed to carry those ton-miles is made available and has had time to develop that demand. The Tribunal indeed, by refusing licences until the new traffic was there to be proved might have blocked all expansion of road transport above the level of the base year 1932/33, since the new business upon which a new carrier would have to rely could not become evident as traffic until he had the vehicles required to carry it! Fortunately there were one or two cracks through which growth could take place. Established hauliers, already licensed to provide a service, have developed new business, and applied for additional vehicles,

arguing that their vehicles were over-worked because of the increase of business, and that their customers, both new and old, were being put to inconvenience. (39) New firms and individuals were able to set up as hauliers in the early years of the licensing system because of the definition of a newcomer, one, that is, not established as a haulier in the base year, 1st April, 1932—31st March, 1933. Anybody, therefore—and there were a number—setting up as a haulier between 31st March, 1933, and the date when the application for a licence was heard (the Act did not become operative till April, 1934) had an opportunity of working up business, new business which would, in due course, justify the grant of a licence. But once the licensing system passed the first currency period of two years, it became increasingly difficult, if not almost impossible, for “newcomers” to enter the trade.

Intending hauliers have secured licences upon a showing that they were able to provide suitable service where none was already available. (40) This was not easy to prove, once the first currency period had expired, and licences could no longer be “claimed,” since an applicant could give no practical demonstration until he had his licence—and licences were withheld until such proof was forthcoming to the satisfaction of Licensing Authority and Tribunal! (41)

Licences have not always been granted even in cases where operators were able to develop new and apparently successful businesses. Too great a success has aroused the suspicions of the Licensing Authority and caused him “to consider very carefully whether the grant of additional facilities would have the effect of abstracting traffic from those persons already providing transport facilities in the area.” (42) Admittedly, this licence was not refused on the ground that the business had been too successful, but its rapid growth did not help the applicant’s case.

More significant was Forrester’s case. (43) Forrester had established a parcels service connecting Cardiff with the inland villages up the valleys. To some of these villages there was direct rail connection with Cardiff. In the circumstances Forrester could be accused of abstracting traffic from the railway. But to other villages there was no direct rail connection with Cardiff. Forrester provided a service which did not exist before, and worked up a traffic between Cardiff and these villages, profitable to himself, and of convenience and value to the public, judged at



least from the fact that his service was patronised. This business was new business, since there had been no traffic between Cardiff and these villages before, and it met a public demand. The demand, admittedly, had not been evident before Forrester instituted his service. It did not become active and effective until enterprise, in the person of Mr. Forrester, provided the service which allowed this potential demand to manifest itself as the offer of traffic between Cardiff and villages hitherto unconnected with that centre.

On the face of it, this would seem to be an eminently suitable case entitling an operator to a licence. A hitherto unsuspected public demand was found to exist, a service was provided to satisfy it, and new business worked up thereby, clear evidence of public need. Forrester applied in due course for a licence for vehicles to operate this service. He had not been in business in the base year, 1932-33, and so could not claim a licence. His application was refused in part. The refusal was confirmed on appeal. The licence was refused not only on the ground that traffic was abstracted from the railway where Forrester's service was directly competitive. It was refused also because the services proposed were too frequent, so frequent as to be wholly wasteful and unnecessary, and because the natural centres for the villages without direct rail connection with Cardiff were towns other than Cardiff. Enterprise in this case had shown a demand to exist, but the Licensing Authority would have none of it. This demand ought not to be satisfied, or should not be, since there was no "community of interest," in the Licensing Authority's words, between Cardiff and the places named. Community of interest had had, so far, no opportunity to develop, because there were no easy and direct connections.

Forrester's case did not become a leading case, nor was it cited in any subsequent appeal. This was fortunate. Otherwise intending operators might have had to prove, not only that there was an unsatisfied demand to be exploited, but also that this demand arose out of a proper and acceptable community of interest between the places to be served, a task involving a considerable amount of historical and sociological research!

The Act of 1933 does not specify the rates charged by road operators among the matters which the Licensing Authorities shall consider. The Tribunal has consistently refused to allow

questions of rates as relevant evidence (44), except in the extreme case where a traffic would not pass *at all* were it not for the lower rate (45) or where traffic has been shown to be "false," built up by charging rates uneconomical to the applicant. (46) It seems extraordinary that a piece of legislation should be enacted to control the supply of road transport, and that a Tribunal should be asked to decide causes involving the provision of a greater or less amount of a competing service, without there being considered from the first, the prices at which those services were being sold. The Licensing Authorities are asked to decide whether or not existing facilities are suitable, and whether such facilities are or are not in excess of requirements. Neither of these questions can reasonably be answered without reference to the price asked for the service. The "suitability" or otherwise of two competing services cannot be compared unless the prices at which each service is being provided is also considered. A service which is suitable at one price may be distinctly unsuitable at another (higher) price. A service suitable enough at the price asked in and by itself may become unsuitable just because an equivalent service is being offered at a lower price, or a better service at the same, or even a higher, price. Equally, of two services, the inferior might be more suitable than the superior, if it were offered at a lower price. The service superior in quality becomes more suitable only if the difference in price between the two is less, in the estimation of the consumer, than the difference in quality. Even though road service might be no more suitable than that given by rail, as the term is understood in the traffic courts, the fact that the road rate is lower than the rail rate makes railway service economically less suitable than road transport.

The less the price asked for a service, the greater the quantity which will be in demand. The lower the average of road charges compared with railway rates, the greater the number of vehicles which might be licensed without the supply of transport exceeding requirements. Facilities exceed requirements when more service is provided than can be used at the price currently being asked. If facilities are not provided at a relatively low price because there are available other transport services at a higher price, some of the demand must go unsatisfied, that part of the demand which was prepared to employ more of the service

at the lower price. The total of facilities available, at the higher and the lower prices, consequently, becomes less than the quantity required to meet the needs of the public. The law in fact does not recognise the existence of any elasticity of demand, does not appreciate the point that if a new and, in certain respects, improved transport service was being offered at a lower price, then the demand for transport would increase, and the total of service provided, adequate enough at the higher price, would no longer meet the "requirements" of a demand enlarged by the fact that transport could be got at a lower price.

Part of the traffic carried by road was certainly new traffic, created by lower rates or by greater refinement of service ; but part at least was diverted from the railway. Improvements were constantly being made in the design of motor vehicles and the costs of operation were steadily reduced. Successive additions to the rates of duty on hydro-carbon oils raised the price of fuel and taxes became heavier, but these additional expenses were completely absorbed by current advances in design. Road transport being a highly competitive trade, improvements showed themselves in lower rates and improved services—if anything transport cost the trader less in 1939 than in 1929. Something would have been gained from road service even though the charge was no less than the railway rate, but the main advantage certainly which road haulage offered the trader was the lower cost (to him) at which goods were carried. This advantage was enjoyed only to the extent to which traffic could be transferred from rail to road whenever the lower road rate made this worthwhile. But hauliers' fleets were not allowed to expand in response to the increased demand for their services, since a reduced charge, whether the result of an improvement in technique or not was not a matter justifying the grant of a licence. Some traders, therefore, whom it might have paid better to consign by road were in fact compelled to ship by rail although the rate was higher. That the railways should lose some traffic to a new competitor was unavoidable ; but if technical progress, measured by reduction in cost, is less rapid in railway working than in road transport then it is in the public interest that the more efficient method should be allowed to expand, even to the detriment of the less. The Act and the Tribunal, by withholding licences when it was evident that the

applicant had obtained, or would obtain his traffic at the expense of some other carriers by rail or road, certainly lessened the losses suffered by the railway ; but the development of a cheaper means of transport was hindered, and a number of new services were prevented from coming into existence. The losers were the traders immediately and the public finally ; the beneficiaries both the haulier who could keep his licence and the railways. In fact neither party gained very much. Competition between licensed hauliers remained exceedingly active, despite the opportunities of a combination offered by restriction, and the railway companies after a brief interlude of rising traffics in 1935, 1936 and 1937, found themselves in 1938 as far from earning the standard net revenue as they had been in 1933, the year before the Act became effective.

The Act placed, indirectly, other obstacles before the road transport business. The "A" licence is current for a limited period, and there is no right to renewal. It follows that the effective expectation of life of a haulage business might be no more than five years. If all haulage undertakings had to be conducted in such a way that the capital invested could be recovered in five years' time, a considerable increase of costs and a reduction of enterprise in the industry might be expected. In fact hauliers already in business relied on their ability to show that their vehicles were regularly used, which proved their case for renewal. (47) But had road hauliers been faced with a declining volume of business, they might well have found that the expectation of life of a haulage business was, in fact, no more than five years, and it may reasonably be surmised that the numbers of public carriers would have been drastically and rapidly reduced !

The licensing system greatly inhibited both change and enterprise in the road transport business. Enterprise did not have the opportunity of working up new services, could not create a demand for its product, and any change in an existing business was much discouraged lest these changes should jeopardise renewal. (48) Enterprise cannot make itself felt without bringing changes in its train. Road transport consists of a very large number of small businesses in active competition with each other, and nearly all under the immediate personal control of their owners (and more often than not of their founders). It is

consequently a trade in which conditions are particularly favourable for the consumer to enjoy the fruits of enterprise. Yet road

TABLE 15

## GOODS TRANSPORT INDUSTRY

The number of goods vehicles under "A," "B," and "C" licences at 30th June, 1938, was given by the Minister of Transport in the House of Commons on 1st and 8th December, 1938. The only available comparable figures are for 30th June, 1937, and 30th April, 1936, and are shown in the Third Annual Report of the Licensing Authorities, 1936-37, as follows:—

	No. of Licence Holders		
	April, 1936	June, 1937	June, 1938
"A" Licences .. ..	25,648	23,750	22,999
"A" Contract Licences .. ..	2,084	3,267	3,967
"B" Licences .. ..	34,100	34,061	34,120
"C" Licences .. ..	161,221	186,481	178,298
Total .. ..	223,053	247,559	239,384

	No. of Vehicles Authorised and in Possession		
	April, 1936	June, 1937	June, 1938
"A" Licences .. ..	85,337	83,626	83,749
"A" Contract Licences .. ..	5,156	7,475	9,467
"B" Licences .. ..	52,809	53,775	54,906
"C" Licences .. ..	316,714	362,380	365,025
Total .. ..	460,016	507,256	513,147

These figures are those of vehicles in possession only, and do not include vehicles hired or under trade plates.

Table reproduced from *Basic Road Statistics*, 1939, published by British Road Federation.

haulage was not permitted to offer the quantity of transport which provided the most efficient service to the trading community; it was restricted to a quantum just enough to remove "inconvenience." The trader was prevented from choosing the type of transport which suited him best, not because the Licensing Authority and Tribunal dictated which he should patronise, but because, wanting to use road transport, the facilities required might not have been available because the licences had not been issued.

The restriction imposed on the growth of the business was severe and arbitrary. The real reason and justification of the demand for road transport, cheaper rates, could not be considered in evidence. Unable to plead lower rates, many traders were forced into far-fetched and unacceptable reasons for preferring road transport when their real ground was the lower charge compared with the railway rate.

The degree of restriction cannot easily be estimated. The only figures available are those of numbers of licences issued and vehicles licensed.<sup>1</sup> These statistics are not an accurate, nor even approximate, measure of changes in the carrying capacity of public contractors, since that depends as much upon the average load a vehicle can take, and the laden mileage run each year, as upon the actual numbers of vehicles operated.

<sup>1</sup> Table 15.

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Vol. 24, p. 258.  
G.W. & L.M.S. Rly. Cos. and Smart, Vol. 24, p. 273.  
L.M.S. Rly. Co. and A. P. & L. Ingleby, Vol. 24, p. 294.
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Allatt and L.M.S. & L.N.E. Rly. Cos., Vol. 23, p. 82.  
Four Amalgamated Rly. Cos. and T. W. Foster, Vol. 24,  
p. 265.

- G.W. & L.M.S. Rly. Cos. and Smart, Vol. 24, p. 273.  
 H. W. Hawker, Ltd., and G.W. & L.M.S. Rly. Cos (No. 2),  
 Vol. 25, p. 99.  
 John & Patricia Forrester and G.W. Rly. Co., Vol. 23,  
 p. 225.  
 Southern Rly. Co. and Owen, Vol. 24, p. 36.
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 L.N.E. & L.M.S. Rly. Cos. and Gimson, Vol. 24, p. 82.  
 L.M.S. & L.N.E. Rly. Cos. and J. & H. Richards, Vol. 25,  
 p. 114.
35. Axford and Southern Rly. Co., Vol. 24, p. 77.
36. Enstone & Co. and L.M.S. Rly. Co., Vol. 22, p. 3.  
 Petrie and G.W. Rly. Co., Vol. 22, p. 16.  
 Thornley and L.M.S. Rly. Co., Vol. 22, p. 249.  
 L.N.E. Rly. Co. and Brownbridge, Vol. 22, p. 255.  
 John Rhodes and L.M.S. Rly. Co. & Another, Vol. 22,  
 p. 267.  
 L.M.S. Rly. Co. & Others and Motor Carriers, Ltd.,  
 Vol. 23, p. 164.  
 Henry & Elsie Shepherd and L.M.S. Rly. Co., Vol. 23,  
 p. 173.  
 John & Patricia Forrester and G.W. Rly. Co., Vol. 23,  
 p. 225.  
 H. W. Hawker, Ltd., and G.W. & L.M.S. Rly. Cos. (No. 2),  
 Vol. 25, p. 99.  
 J. & E. Transport, Ltd., and L.M.S. Rly. Co., Vol. 26,  
 p. 183.
37. John Rhodes and L.M.S. Rly. Co. & Another, Vol. 22,  
 p. 267.
38. L.M.S. Rly. Co. and Tait & MacConn, Vol. 22, p. 201.  
 Smith and L.M.S. Rly. Co., Vol. 22, p. 262.  
 Hawker and G.W. & L.M.S. Rly. Cos., Vol. 23, p. 23.  
 Edwards and L.M.S. Rly. Co., Vol. 23, p. 67.
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 G.W. & L.M.S. Rly. Cos. and Smart, Vol. 24, p. 273.
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 Smith and L.M.S. Rly. Co., Vol. 22, p. 262.  
 Hawker and G.W. & L.M.S. Rly. Cos., Vol. 23, p. 23.

- Edwards and L.M.S. Rly. Co., Vol. 23, p. 67.
41. Enstone & Co. and L.M.S. Rly. Co., Vol. 22, p. 3.  
L.N.E. Rly. Co. and Hurd; Newhams and Hurd, Vol. 22,  
p. 147.  
John Rhodes and L.M.S. Rly. Co. & Another, Vol. 22,  
p. 267.  
Moss Brothers and Southern Rly. Co., Vol. 24, p. 253.
  42. Henry & Elsie Shepherd and L.M.S. Rly. Co., Vol. 23,  
p. 173.
  43. John & Patricia Forrester and G.W. Rly. Co., Vol. 23,  
p. 225.
  44. L.M.S. Rly. Co. and A. P. & L. Ingleby, Vol. 24, p. 294.  
Four Amalgamated Rly. Cos. and Bouts-Tillotson, Ltd.,  
Vol. 25, p. 158.  
L.M.S. & L.N.E. Rly. Cos. and Stevenson Transport,  
Vol. 25, p. 328.
  45. Alexander (Charles) and L.M.S. & L.N.E. Rly. Cos., Vol. 26,  
p. 260.
  46. Power and L.M.S. Rly. Co., Vol. 22, p. 21.  
Bouts-Tillotson Transport, Ltd., and Donaldson Wright,  
Vol. 23, p. 106.  
L.M.S. & L.N.E. Rly. Cos. and Beazley, Vol. 24, p. 112.  
Aitchison & Others and Dowling, Vol. 25, p. 9.
  47. Four Amalgamated Rly. Cos. and Bouts-Tillotson, Vol. 25,  
p. 158.  
Oxlade and G.W. Co., Vol. 26, p. 234.
  48. Four Amalgamated Rly. Cos. and Bouts-Tillotson, Vol. 25,  
p. 158.  
Modern Haulage Services, Ltd., and L.M.S. & L.N.E.  
Rly. Cos., Vol. 25, p. 272.  
Hargreaves and L.M.S. Rly. Co., Vol. 26, p. 56.  
O'Sullivan and G.W. Co., Vol. 26, p. 155.  
Barnett Joel, Ltd., and L.N.E. Rly. Co., Vol. 26, p. 136.  
Oxlade and G.W. Rly. Co., Vol. 26, p. 234.

## CHAPTER VIII

### The Penalty of Bigness

#### SECTION I

*Large transport undertakings the more economical to operate; can provide the better through working and the more comprehensive service.*

TECHNICAL advantage, in the working of transport services at least, is held by the large undertaking. Economical operation demands full loads, regular cargoes, and freight in both directions. To obtain the necessary flow, consignments have to be collected and delivered over a wide area from each station or depot. The large concern alone can command the volume of traffic needed to keep an expensive collection and delivery service fully occupied with the minimum of waste mileage. A smaller undertaking must either draw its traffic from a limited area or cover greater distances to make its few pick-ups and drops. In choice of vehicles, the small concern has two alternatives, neither satisfactory and both expensive. If special vans are used for local cartage and trunk service, there may not be enough local work to keep the cartage vehicles fully employed; on the other hand, operating efficiency suffers if lorries are put in service which can be used for both purposes.

A large undertaking can balance traffic more readily than a smaller concern. It is often the case that there is more freight in one direction than in the other. A business which serves two points alone must limit its capacity to the smaller volume of traffic, or incur a great deal of empty running in the reverse direction. A concern large enough to include other points in its network avoids this difficulty by operating "triangular" services. For example, traffic between A and B might be unbalanced, the greater flow being in the direction of B. Similarly, there might be more traffic from B to C than vice versa, and from C to A. Three transport firms, each confined by its size to working between the one pair of towns, would be unable to attain economical operation, since each would have to run vehicles only partially loaded in the direction of the smaller flow of traffic. One large undertaking, on the other hand, able to run services between all three points,

could greatly reduce the proportion of empty running. The surplus vehicles at B, brought by the larger flow of traffic from A, could be worked round to A through C, carrying the excess of traffic from B to C and from C to A.

Transport undertakings everywhere strive to reduce mileage run light, and stock held idle. Goods wagons, owned by the four railway companies in this country, are used in common; and the amount of empty running involved is a main part of the case against private ownership of wagons. In the United States a pool of freight cars is often suggested. The Pullman, express, and refrigerator car companies are important economically to the United States railroads for just this reason. The flow of traffic varies throughout the year; passengers to Maine at one season, to Florida at another. If each company provided its own stock to meet these demands, the north-eastern roads would have a large surplus of passenger cars in winter, the roads serving the south-east an excess in summer. The Pullman company supplies the cars in summer to the north-eastern roads when the New Yorkers are going up to New England, and transfers them to the roads serving Florida in the late fall and winter. Thus the service required at different times of the year can be maintained with minimum equipment. The same result could have been reached by combining into one system the roads north and south out of New York. Instead a special company has been organised to own the cars and hire them to the roads which need them.

The advantages of the large concern in transport are not confined to more economical operation. It is of great importance to the trader that he should be able to have his goods delivered expeditiously and certainly to any point within his area of distribution; it is equally important to the consumer that he should be able to get his supplies wherever he may be. Reliable country-wide service can most easily be given by large transport undertakings, linked by an efficient and comprehensive clearing system. Small concerns do not cover points outside their immediate areas, and those areas are *ex-hypothesi* small. Through services worked by small undertakings involve many connections; the smaller the concern, the greater the number of connections with other carriers, and the less reliable the throughout service. It is not impossible that many small carriers might be organised through a central clearing

house to give efficient and reliable service over a wide area. But it is always easier for a few large concerns to work together than many small ones, and the fewer the separate undertakings, the greater the chance of success. Comparison of the organisation of banking in the United States with British practice points to the same conclusion. The few large joint-stock banks in this country have been able to evolve a machinery for clearing cheques from one end of the country to the other greatly superior to the system in the United States, where banking is in the hands of many thousands of small unit banks.

The railway companies are generally the only undertakings capable of maintaining a service so comprehensive that goods may be consigned, with the certainty of delivery, from any station or siding to almost any town, village, or place, however remote. It is a major defect of road transport that there is no system for the exchange of traffic between hauliers. No operator can accept traffic to places other than the few large towns which he normally serves. There were in Great Britain a few working agreements between haulage concerns whereby traffic consigned to one is forwarded by another to a destination not served by the firm originally receiving the traffic, and certain "freight clearing houses" covered, through sub-contractors, a wider area than any individual haulier. But the scope of these agreements was limited, and most of them did not work satisfactorily.<sup>1</sup> One cause of failure is the character of the haulier himself. Operators of road transport concerns are usually self-made, and not very ready to co-operate with others. Another important cause is the small size of the unit. Efficient through working demands an office staff and equipment capable of keeping connecting services, and traffic forwarded and received, continuously

<sup>1</sup> Successful examples of through working between road carriers were almost all to be found among those specialising in parcels. Unlike the larger lots of traffic, parcels are often consigned to many points within a wide area. Contractors who undertake this business must be able to reach most of these places if the service is to be worth using. There were few individual carriers with an organisation of their own large enough, and some degree of through working thus became a condition of the growth of parcels services by road. These arrangements depended for their success on careful personal selection of the connecting carriers by the organising firm. In some areas no suitable carriers can be found and in others connections once made had to be dropped. In either case the through service could not be maintained, because responsible co-operation was not forthcoming. The very much longer distances involved in the United States appear to have enforced a greater degree of organisation in motor carriers, and instances of through working are more common than in the U.K. See p. 106 above.

under review. Only a large undertaking can afford to provide and maintain the necessary bureaucracy. It has already been observed that railway companies rarely lose consignments entirely, however great the delay in delivery. Road services are said to be more punctual but a parcel once lost or mislaid is not often recovered, the more so if the throughout journey is made by more than one carrier.

The large undertaking is the only one able to accept all classes of freight. The smaller road haulier specialises in certain traffics and cannot take other goods because his (few) vehicles are not suitable. He may have to refuse freight because he lacks capacity, or postpone a job till he has a vehicle free. The trader, for the normal run of his traffic, can employ the haulier who does that sort of business—but for the unusual consignment, he turns to the railway. The large concern, the railway company, alone can maintain the equipment, the machinery, and the capacity necessary to carry all freight all the time and in all the circumstances in which it may be offered for transport.

## SECTION 2

*Railway companies hampered in competition with small road hauliers, not by legal restraint, but by large-scale organisation combined with publicity of rates. Small railway companies might be in a stronger position to compete. Large organisation has administrative disadvantages; and the railways are statutory carriers. Road hauliers may be common carriers, but the obligations of this status are less onerous. Obligation to carry a hardship only if rates are not remunerative. Railway rates such that road can concentrate on the traffic which is cheap to carry, and leave the railway with the more expensive.*

Consideration of operating efficiency indicates that a reliable transport service covering a wide area is likely to be maintained at less cost by a few large undertakings than by many small. Yet, in fact, in Great Britain during the decade preceding the War (1939) the small concern, the road haulier, was gaining at the expense of the large, the railway company. The immediate reason for the relative success of road transport has been exhibited in Chapter IV, Section 1. Road hauliers are free to charge whatever rates they choose. Road charges



generally are based on the costs of carrying the particular parcel of goods, wherever it may be consigned. Railway companies charge rates based both upon the value of the goods, and upon the costs of carrying a particular consignment. Inadequate allowance appears to be made in the rate for difference in the cost of conveying large and small consignments; and little or none is made for difference between the costs of working traffic over one route and another—all hauls of equal length are charged at much the same rate per ton per mile.

From the cases cited in Chapter II, Section 4, it is clear that the source of this disability is not primarily legal control of rates and charges under the Act of 1921. The Act has been so framed, and the Tribunal has so interpreted and administered Part III of the Act, that in practice railway companies might make any changes in rates which they saw fit, as and when they chose. Some rates were reduced to meet road competition. Consent, if consent were required, was given and there is no reason to suppose that more comprehensive changes would have been refused. Had they desired to do so, the companies at any time since Part III of the Act became effective in 1928, might have adjusted their whole system of rates and charges to meet the altered circumstances of the transport market. The influence of the value of goods upon railway rates might have been removed either by granting new and lower exceptional rates upon more valuable freight, or by re-classification; rates on the larger consignments might have been reduced and the "small" scale raised; and charges generally might have been increased on the lines which carry the least traffic at the same time that the exceptional rates on the major traffic routes were being reduced.<sup>1</sup> In each case the application to the Tribunal for consent could have been supported by the plea that the proposed changes were designed to increase a net revenue already less than standard. In short, those characteristics of the system of railway rates which allowed road transport to compete so successfully could have been removed, and the difference between one rate and another made to depend, like the competitive road charge, upon the relative costs of carriage. There is nothing in Part III of the Act of 1921 nor in the precedents laid down by the Tribunal to prevent the companies from making changes

<sup>1</sup> Above, p. 111.

as wide as this. But it was not done, nor even proposed. It may be presumed, therefore, that the companies did not expect that such a revolution in the principles of railway rate-making would pay. In the estimation of railway managements, revenue from traffic retained and recovered by new charges of this sort would not have offset the loss arising from the reductions to which this policy would have led in the rates on freight not endangered by road competition.

Lower rates put in to meet road competition add to net revenue only if the concession can be confined to the individual case ; the object of the reduction is defeated if it has to be extended to all traders shipping the same sort of goods or even to all those competing with the favoured trader. Owing to undue preference and the obligation to publish rates, a railway company, cannot easily reduce the rate on one trader's traffic unless at the same time it reduces equally the rate on all the traffic of all traders in the same line of business. This is rather more than the law requires, but as it was pointed out in Chapter VI the freedom of railway companies competing with motor hauliers on the public road is restricted not only by legal control, but also by the large scale upon which each company is organised. Removal of legal prohibitions would not release railway companies from the restraints of the principle of undue preference, nor would it automatically give them greater freedom to discriminate between traders shipping the same sort of goods. Railways are organisations of great size, their network of lines covers the country, and their rates are widely known among all interested parties. Given these levers, pressure of opinion among the trading public can be strong enough to prevent the grant of rates and services to particular traders considered to be unreasonably favourable to others. The road haulier, by contrast has a much greater liberty to fix his charges as he thinks fit or as competitive circumstances dictate. This is not because he is free from legal control, but because the haulage firm is small and is under no obligation to publish its rates.

Examination of the probable position of a system of small railway companies supports this opinion. The law of undue preference does not require one railway company to charge the same rates as every other company to all traders shipping the same or similar and competitive merchandise and requiring the

same or similar services from the company. It demands only that *one company* shall not unduly prefer one trader, or group of traders, and subject others to a corresponding "undue" prejudice. There is nothing in the Acts of 1854 and 1888, as interpreted by the Railway and Canal Commission, to stop one company from charging a rate on a traffic different from the rate asked by other companies on similar traffic, notwithstanding the fact that the two rates, if both were being charged by the one company alone, would create an undue preference. This gives small railway companies, for example those which existed before the amalgamations of 1921, an advantage over the large. Each railway company must respect the prohibition of undue preference only on its own system. Small railway companies would have to ensure only that no one of the relatively few traders who shipped goods over their own small systems was being prejudiced by any rate that company might charge. The smaller the companies, the fewer the number of other rates each need take into account when asked to grant a reduction, and the smaller the chance that other traders might be prejudiced or their sense of equity outraged.

A small company which found its traffic being diverted to road could put in a reduced rate to defeat competition. Other traders, customers of other lines, might thereby be prejudiced, but the preference created would be neither undue nor illegal. The small company need not fear that reductions would have to be conceded to traders shipping the same sort of goods in other districts. Those districts might be in the areas of other railways, and the company making the reduction has no responsibility for the rates charged by other companies. A small railway company should be in as strong a position as the (small) road haulier to refuse the demand for reductions on traffic passing over its lines, similar to those put in by other small companies. The company asked to concede the rate is not the same undertaking as that which granted the reduction, and there is nothing in law or custom to require one concern to reduce its charges just because another quite separate business has done so.

The principle of undue preference is not in itself unreasonable. The law, reinforced by custom, does no more than prevent a railway company, under certain circumstances from charging

different prices to different traders for services which are in effect the same. In no ordinary business can firms expect, as a matter of right, to be able to charge lower prices to some customers than to others, just because the first have the advantage of competitive supplies—and if in fact many do just this, it is because knowledge of lower prices charged to favoured customers can be kept from the others, and because the less favoured, for one reason or another, cannot exert much pressure. But no firm has a just grievance if it finds that its prices cannot be reduced to one consumer unless the advantage is extended to all upon the same terms, and it is hardly to be accounted an inequitable burden upon a railway company that it should be bound by these limitations. Freedom to pick and choose, to select a particular traffic and refuse another, is admittedly a great advantage in competition; but it is an advantage rooted in a fundamental difference in economic organisation and does not arise out of a different status before the law. Road hauliers are not specially privileged by being free. Competition compels the many small hauliers where the few large railways are constrained by law; although it is true that the compulsion would be considerably greater if the British law, like the American, had required publication of road charges.

Large railway companies are subject to other disadvantages which must be balanced against the economies arising out of their size. A major hindrance in competition with small road hauliers is the very high degree of centralisation which size makes inevitable. With the strict watch kept over railway rates by the vigilance of traders, trade associations, and chambers of commerce, no company can allow its local agents much discretion. Each application for a new rate must be carefully examined. It is not enough to know that a rate pays immediately, in the sense that gross receipts are expected to exceed the extra cost of conveying the traffic. The railway management must look as well to the relation of the new rate to rates already being charged on other similar traffic, to ensure that no undue preference is created, and no inequity inflicted upon any trader, or body of traders, for which they might demand redress. If the rate is a through rate, or if another company is conveying a similar traffic in competition with the first, other railway companies must be consulted. The company has to consider in addition how a new rate is going

to affect other important streams of traffic, either on its own or another company's system. A lower rate on stone used for building might disturb a traffic in bricks, and a new rate to one port might raise difficulties about the rates to other ports. With so complicated a system of rates, every detail of which must be published, no one rate can be altered without affecting more or less intimately a very large number of other rates. This means that most proposals for new rates have to be referred to the head office of the company, and even to the inter-company committee of goods managers at the Railway Clearing House. The only applications which can be left entirely in the hands of the local officials are the rates on traffic local to one district and to one railway. Even these rates go before the district goods managers. Local agents and freight canvassers, the officials who come into personal and frequent contact with the trader, are only the channel through which enquiries are transmitted to the railway management. They cannot possibly have at their command the detailed knowledge of other rates, and the interaction of one rate on another which is required of those competent to decide upon applications. Indeed, no one official, however august, could possibly be as well informed as this. Consideration of railway rates is, and probably will remain, the preserve of the committee with all its attendant delays. It could not be left to the discretion of local agents. There would be too great a risk that other traders might unwittingly be prejudiced. The company might have to allow in redress concessions costing far more than was to be gained from carrying any traffic the new rate might have secured. Procedure with road transport was much simpler. The haulier quoted his rate without delay because the firm was small and enquiries came direct to responsible authority—it was often the owner or manager of the firm who answered the telephone—and because the haulier did not need to consider the effect of his rate on any one but himself and the trader concerned. It is not the requirement of consent from the Tribunal, nor the necessity of taking proposed changes to a Court of Law which prevents a railway agent from quoting a rate with the same celerity. It is the time consumed in obtaining the consent of head office and the agreement of other companies. Long before these requirements are satisfied, even before an application to the Tribunal for consent could be

prepared, the traffic had gone—by road.

Size and centralisation mean bureaucracy. Officials are impersonal and distant. A small concern takes an active interest in its clients and gives the particular requirements of each sympathetic consideration. The haulier is anxious to humour his customers—the trader is often larger than the carrier. One trader's traffic might be a sizeable proportion of a contractor's business; sometimes, indeed, the greater part, or even all. The railway is an organisation greater than the largest traders. It overshadows its customers. A trader cannot bargain easily with the railway because he is one only of innumerable clients. For the same reason railway officials cannot give the same personal and flattering attention to the idiosyncrasies of their many customers that the haulier could to his few.

Factors such as these all help the very small competitor against the very large. But none would have given the road haulier an advantage decisive enough to imperil the financial stability of the four amalgamated companies were it not that the railways are both statutory carriers and large organisations. This combination was the compelling reason preventing the companies from reducing their rates and exploiting to the full the opportunities presented by the economies of large-scale. Railway lines and stations cover the entire country. Between them the companies have established a machinery for clearing traffic which is efficient and comprehensive. They are obliged by the statutory terms of their undertakings to convey all the traffic offered to them and to all stations on any railway system at their published Standard and Exceptional rates. Through rates are quoted in rate books from each station to every other, or such rates can be obtained. Any person therefore who tenders the appropriate charge can require the companies to convey his goods to any station to which he may desire. There are few exceptions. The companies, for example, cannot be required to carry out-of-gauge traffic, and a special charge may be made for "heavy" articles weighing more than twelve tons.

The road haulier is in quite a different position. He may pick up what traffic he pleases, and can and does, carry only to those places to which it is convenient and economical to run. Before the war (1939) the business could not possibly have undertaken a comprehensive obligation compared with that laid on

the railways. Hauliers did not and could not obtain depots in all towns and villages. Most important of all road operators had no clearing system and could not exchange traffic between one and another over the whole area of the country.

The haulier was under no statutory obligation to carry and he could if he chose, avoid the status of a common carrier. But he was not particularly privileged in being free. The obligations in law of the common carrier are limited. He can only be required to take goods his vehicle can reasonably be expected to carry, and to convey traffic to places he normally serves, provided that the consignor tenders a reasonable sum. Each haulier is small. His vans, limited in number and size, are not suitable for all classes of merchandise. No haulier can reasonably be expected to carry to places other than those he normally serves, nor asked to accept traffic for places outside his usual area of delivery. A haulier who normally carries to London cannot be expected to take traffic to Hull, and one whose main business is to carry cottons cannot be asked to haul timber. Traders with freight for Hull must find a contractor who works lorries there, and timber merchants must employ hauliers whose regular business it is to convey such goods.

It is no burden upon a carrier rail or road to be required to accept freight to all points if the rates he can demand are "remunerative." A statutory obligation to carry is an onerous liability only if rates do not adequately allow for differences in the costs of carriage. The principles upon which railway rates are constructed have had exactly this result. The system of charges established by custom and by law imposes on railway companies the liability of charging rates high in relation to cost on traffic which is cheap to carry; and obliges them to work the more costly freights and services at rates which are correspondingly low. The road haulier, freed by his small size and lack of a clearing system from any obligation or liability in respect of routes he does not serve, merchandise he does not carry, and customers not his own, confined himself to the more lucrative services—the routes cheap to operate and the freights costing least to convey. There he can and does compete, and competes successfully, since railway rates are disproportionately high. The railway companies were left to maintain the services expensive to work and the consignments costly to convey, for

the very good reason that owing to the relatively low rate which the railway companies were charging this traffic did not pay so well.



## CHAPTER XI

### Trans-Atlantic Comparison.

This chapter attempts to summarize an immense and complicated subject. No more than a bare outline can be given here of the history of American transportation and the many fascinating constitutional problems involved. For more detail the interested reader is recommended to turn to the standard text books, including those referred to in this chapter; to the reports of the Federal Transport Co-ordinator; and to the reports of proceedings before the Interstate Commerce Commission, particularly the recent Class Rate Investigation 1939, No. 28,300 and Consolidated Classification Investigation, No. 28,310 referred to below on p. 193n.

#### SECTION I.

*The size of the United States transport system. The constitutional complication. Inter and Intra-state traffic. Conflict of jurisdiction between Federal and State authorities.*

The continental United States extends from East to West 3,500 miles, and from North to South about 2,000, enclosing an area of 3,700,000 square miles. Within this vast territory there are wide variations of topography—wooded hills in the East and North-East, broad valleys, swamps and bayous in the South, flat prairies in the Middle West rising to the high peaks and ranges of the mountain states in the North West, and deserts in the South West bounded by the fertile coastal strip of California. The country is served by approximately 500 wholly independent railroads or railway systems,<sup>1</sup> owning in the decade before the war, 230,000 miles of track, 40,000 locomotives, 2,000,000 freight cars and 40,000 passenger coaches. They employed a million persons and hauled 1,000 million tons of freight an average distance of 340 miles, earning just less than 1 cent per ton mile. About 500 million passengers were carried an average distance not exceeding 40 miles at a rate which, in the late thirties, had fallen to less than 2 cents a mile.<sup>2</sup> The 150 or so railroads earning a gross revenue of \$1,000,000 or more, known as the Class

<sup>1</sup> It is difficult to give precise figures. Including switching and terminal companies the number of working railroads, not all of which are independent, is probably over 800; and there are in addition 600 non-operating companies whose properties are leased to other railroads.

<sup>2</sup> These are rough figures; the annual statistics will be found in the appendix.

I companies, operate between them all but a very small proportion of the total railway mileage, the exact figure depending upon the corporate relationships effective at the time. These Class I properties for all practical statistical purposes, make up the railway system of the United States of America.

American road statistics are on an equally large scale compared with the British. The 48 states and their subordinate authorities—counties, townships and so on—maintain well over 3 million miles of road, although it is doubtful if any great length of the  $2\frac{1}{2}$  million miles of unsurfaced earth highways would be recognised as 'roads' by the British traveller. The state highway systems (500,000 miles excluding all secondary roads, roads for which the lesser authorities such as county and township are responsible, and city streets) now consist predominantly of surfaced roads, and are being added to year by year. Excluding other rural roads, the cost of which must amount to almost as much again as the state highways, the 48 states were spending on their state systems sums which by 1940 had risen to \$1,800 million a year. Federal aid is small, and the main source upon which each state relies is the revenue from motor taxation, principally the fuel tax. Receipts from motor vehicle fees, duties on motor fuel and motor carrier taxes in the years before the War (1941) had reached about four-fifths of the annual expenditure on highways. The balance was made up by drawing upon federal aid (about \$150 million) and receipts from loans.

The number of motor vehicles in U.S.A. is enormous. 29 million private cars were registered in 1940, 130,000 buses, 4,600,000 trucks and tractors and  $1\frac{1}{2}$  million trailers. The following table shows the distribution of ownership by type of vehicle and class of owner.

The main responsibility for assembling truck and bus statistics rests with the states, and is generally undertaken as a by-product of the maintenance and policing of highways. Immediately before the War (1941) the Public Road Administration of the Federal Works Agency, assisted by the state highway authorities conducted a nation-wide truck and bus inventory. Statistically the Inventory was most successful, 92 per cent. of the questionnaires being completed or returned. The tabulations report the mileage run, type of ownership, geographical distribution, and class of business in

TABLE 16  
OWNERSHIP OF VEHICLES, FALL, 1941

	Trucks	Tractors	Trailers
(a) Total publicly owned	139,114	1,127	4,087
(b) Privately owned—			
(c) Not for hire	2,935,607	42,269	79,743
(d) For Hire—			
Intrastate—			
(e) Common	128,425	8,935	10,954
(f) Contract	45,558	6,021	7,471
(g) Total (e + f)	173,983	14,956	18,425
Interstate—			
(h) Common	66,805	37,061	44,057
(i) Contract	18,273	10,176	11,133
(j) Total (h + i)	85,078	47,237	55,190
(l) Local Haul—Total	358,215	7,775	10,408
(m) Not reported—Total	19,140	892	1,380
(n) Total for Hire (g + j + l + m)	636,416	70,860	85,403
(o) TOTAL—All Vehicles	3,711,137	121,256	169,233

This table is derived from the Truck and Bus Inventory taken by the Public Works Administration, Federal Works Agency (Information Memoranda 70 and 82, March, 1945). The discrepancy compared with the figures quoted in the text is accounted for by duplicate registration of the same truck in more than one state. The 169,223 trailers recorded in the table include only commercial vehicles—semi-trailers (138,816), and the four and six wheeled full trailers (30,417). The larger total of 1½ million trailers is inflated by the inclusion of the smaller two wheeled types, usually attached to private cars.

which the vehicles were principally employed. Unfortunately for reasons which seemed good at the time, respondents were not asked for returns of the tonnage of freight hauled. The Interstate Commerce Commission publishes annually traffic returns obtained from a selection of Class I motor carriers (carriers with an annual gross revenue exceeding \$100,000) engaged in interstate commerce. But these figures can hardly be relied upon as an indication of the total, and in the United States as in Great Britain there are consequently no adequate statistics of traffic conveyed by road. In neither country can dependable estimates be made of the two most significant quantities in any discussion of these transport problems—the total volume of goods hauled by motor carriers and that portion which, moving beyond a local haul, is properly competitive with rail borne freight.

The American transport system is profoundly affected not only by the size and extent of the continent, but even more by the

fact that the U.S.A. consists of a federation of 48 States. In matters of domestic concern at least each state is sovereign and independent in a very real sense. The Constitution (Section VIII) delegates certain powers to the Federal Government—defence, foreign affairs and so on—but the residual sovereignty remains with the constituent states, a provision which was expressly reaffirmed by the 10th Amendment in 1791. The Congress in Washington may only legislate upon questions specifically authorised by the Constitution (as amended) and the Administration even though directed by Congress, may only act within the powers granted by the Constitution. The responsibility for determining whether a law passed by the Congress or an executive act of the Administration is allowed by the Constitution rests with the U.S. Supreme Court. If the Court finds (as it often has done) that the Congress or the Administration have exceeded their constitutional authority the law or executive act in question becomes invalid and without force. The Supreme Court is judge in disputes between one state and another and in causes to which the Federal Government is a party. It is also the highest court to which appeals can be carried in suits involving the Constitution and the Federal law.

Among the powers which the Constitution concedes to the Federal Government is the right to regulate foreign and interstate commerce—trade, that is, between the United States and foreign countries, and between the states themselves. The supervision of intra-state commerce, the domestic trade within a state, is retained by the state concerned. The early experiments, started by New Hampshire in 1844, were mainly concerned with safety on railways rather than with rates and commercial practices, but beginning with Massachusetts in 1869, state railroad or public service commissions have been made increasingly responsible, among other things, for regulating rates and facilities on traffic consigned to a destination within the same state.

The first Federal Act to regulate railway traffic between the states was passed in 1887. This measure, the Interstate Commerce Act, was based largely on the British Railway and Canal Traffic Act of 1854. The Act laid down the principles of control and provided for an administrative body, the Interstate Commerce Commission (I.C.C.) a Federal organ directly responsible to Congress. The powers of the Commission have since been

steadily widened both by Congress and the Supreme Court. Besides railways which work traffic from one state to another, the scope of Federal regulation now includes traffic on railroads which, although their tracks might lie wholly within one state, nevertheless accept through traffic for furtherance across state lines by connecting rail or water carriers. Few, if any, railroads local to one state were willing to forego the right to forward traffic to points outside the boundaries of the home state even in order to avoid a Federal regulation which might be more severe than the control exercised by the local state commission over intra-state traffic. The same carrier thus became subject to Federal or state regulation according as the destination of a particular shipment lay in another state or in the same state as the point of consignment. This dual jurisdiction naturally provided ample opportunity for friction between state commissions and the I.C.C. ; so much so that Justice McKenna of the U.S. Supreme Court remarked in one such dispute that "if the carrier obeys the state law he incurs the penalty of the Federal law ; if he obeys the Federal law he incurs the penalty of the state law."<sup>1</sup>

The conflict between Federal and state authority was finally decided in favour of the former. In the Shreveport Case 1914, the U.S. Supreme Court, following the rule stated in the Minnesota Rate Cases 1913, upheld decisions of the Interstate Commerce Commission disallowing intra-state rates on the ground that specific persons or localities in another state were being unduly prejudiced. The principles underlying these two cases were later incorporated in the Interstate Commerce Act (Transportation Act, 1920) and, on its own recommendation, the I.C.C. was given the right to invite members of state commissions to sit in certain cases—those for example in which a decision of the I.C.C. was likely to react upon state authority to makes rates within its own territory, or which involved the validity under Federal law of an intra-state rate.

The Act at first remained relatively ineffective ; but fortified by a succession of amendments and aided by favourable decisions of the Supreme Court, the I.C.C. has since been able to develop and enforce a control over all United States railways regardless of

<sup>1</sup> 207 U.S. 328, 1907, quoted by Ripley, "*Railroads, Rates and Regulations*," Vol. I, p. 631.

whether the particular road might or might not cross a state line. The right, in particular, to prescribe intra-state rates as a means of removing unjust discriminations against interstate traffic, "the law of any state or the decision or order of any state authority to the contrary notwithstanding" has finally won for the I.C.C. the predominant control over intra-state rates, in addition to its undoubted constitutional right, undisputed from the first, to regulate interstate rates. The powers of the states have been correspondingly restricted, and the regulation of railways, rates and charges centralised in the Federal Government to a degree hitherto unprecedented in the U.S.A. except in time of war.<sup>1</sup>

## SECTION 2

### *Powers of the I.C.C. The Consolidated Classification. The Class Rate Investigation of 1939.*

The Interstate Commerce Act as amended and strengthened in 1903, 1906 and 1910 lays a general obligation upon the rail carrier to serve the public. Transportation must be furnished upon request, at a just and reasonable charge. Unjust discrimination between traders is prohibited and competition between carriers may not be unfairly suppressed by the action of one. Rates and charges must be published, accounts and statistics kept in a uniform manner, filed with the I.C.C., and open to inspection by the public. The Act demands that physical connections be established between one road and another on terms agreeable to the I.C.C., a provision made necessary by the refusal of some roads to co-operate with others except upon promise of an unduly favourable division of the through rate. The approval of the I.C.C. must be sought for all schemes of capitalisation and the Commission may also review the management of a railroad if it should not be displaying the characteristics of honesty, efficiency and economy demanded by law. Any classification or change of classification may be suspended by the I.C.C. pending an enquiry into its lawfulness and the Commission, either upon its own motion or upon complaint by an aggrieved shipper, state authority or competing carrier, may review any interstate rate, consider whether it is unjust and un-

<sup>1</sup> Sharfman "*Interstate Commerce Commission*," Part I, p. 225.

reasonable, and if so, prescribe just and reasonable maximum and minimum rates. Although decisions of the I.C.C. rendered upon matters of fact or in its expert capacity are final and cannot be contested in the Courts, a carrier might argue that a rate established by the Commission amounted in fact to 'confiscation' in that it did not allow of an adequate return upon the capital invested in the enterprise. If this opinion is sustained, the Courts will hear the case on the ground that the particular rate deprived the carrier of the right, guaranteed by the 14th amendment to the Constitution, not to be deprived of his property without due process of law.

Despite pressure from the I.C.C. exerted in favour of a single classification, railway traffic in U.S.A. is still subject to three main classifications grouped together as the "Consolidated Classification"—the Official, governing traffic in the territory roughly north of the Ohio River and a line through West Virginia and Virginia and east of Lake Michigan and the Mississippi but including the cities on the western bank of the lake and St. Louis; the Southern, current in the States south of Virginia and the Ohio River and east of the Mississippi; and the Western, applying throughout the vast region west of Lake Michigan and the Mississippi River. These classifications consist of seven to twelve main classes for freight in carloads, numbered or lettered from Class I, which contains the highest rated class of freight normally moving in carloads; seven classes expressed as multiples of Class I, varying from  $1\frac{1}{4}$  to 4 times, principally for shipments of less than a carload; and from 12 to 16 other intermediate classes, all but one (an l.c.l. class) rated less than Class I. In all there are 27 classes in the Official, 28 in the Southern, and 26 in the Western Classification, ranging from  $17\frac{1}{2}\%$  (20% in the Official classification) to 400% of Class I. The same article may be variously classified in each classification, or in two of them. 60% of the ratings (expressed as a percentage of the first class rate) are the same in all three classifications, 27% are alike in two and 13% differ in all three. In addition there are many 'exceptions' to the classification (sometimes called column rates and often expressed as percentages of Class I) "any quantity" rates and, last but not most important, "commodity" rates, a type of charge which excludes the application of the classification altogether. 'Exceptions,' 'any quantity' and 'commodity'

rates, (particularly the last) are instituted to meet the competition of motor and other carriers and even more to develop new industries, to put shippers on more equal terms with their rivals in more distant markets, to allow for special circumstances and so on. The following table shows the distribution of carload traffic and revenue earned from freight conveyed at the three types of rates on September 23rd, 1942—:

TABLE 17<sup>1</sup>

Rate	Carloads	Revenue
	%	%
Class .. .. .	4.1	6.3
Exception .. ..	10.7	16.1
Commodity ..	85.2	77.6

Only within Official Territory and for some inter-territorial exchanges (particularly from official to other territory) does the proportion of car load freight carried at class rates exceed the average for all territories.

For rate-making purposes, there are five major districts or zones—Official (or Eastern), and Southern, which correspond to the classification districts of the same names; and three subdivisions of the Western classification district, Western Trunk Line, South Western and Mountain Pacific.<sup>2</sup> Within these zones, and between them, the railroads may charge any rates which are just and reasonable; which create no undue preferences and inflict no unjust discriminations; and which do not infringe the long and short haul clause prohibiting railroads from charging

<sup>1</sup> 262 I.C.C. 477 at p. 564.

<sup>2</sup> The boundaries of these territories are shown on a map in 262 I.C.C. 447, at p. 730. Roughly, the Western Trunk Line zone lies west of Lake Michigan and north of Oklahoma and includes the Dakotas, Nebraska and Kansas. The South Western zone consists of the States of Oklahoma, Arkansas, Louisiana and Texas; and the Mountain Pacific zone extends from the Eastern boundaries of Montana, Wyoming and New Mexico to the Pacific Coast. Colorado is divided between Western Trunk Line and Mountain Pacific, the eastern third of the State lying in the former zone.



a less rate for the longer distance.<sup>1</sup> The class and commodity rates vary from one district and zone to another. In Official territory for example, the Class I rate for distances up to 1,500 miles is generally about 73% of the Southern Class I rate; 78% of the Western Trunk line Zone I; and 62% of the South-western Zone III.<sup>2</sup> The other class and column rates will be in a like relation, depending upon the proportion which each bears to the Class I rate.

The South and West have long complained that the lower level of rates current in Official Territory unduly prefers Eastern shippers and thus constitutes an unjust discrimination prejudicing the attempts of traders in other districts to gain access to the Middle Western, Eastern and New England States, the most populous and by far the wealthiest market of the United States. This grievance is strongly felt and loudly expressed not only by shippers but also by state governors and by representatives in Congress. The I.C.C., consequently, in July, 1939, on its own motion began an examination of the justice and reasonableness of classifications and class rates generally throughout the U.S.A., excluding only class rates in Mountain and Pacific territory. The following year the Congress included in the Transportation Act, 1940 a section (5b) directing the Commission to investigate the reasonableness or otherwise of rates on manufactured products, agricultural commodities and raw materials between points within any one classification territory or between one territory and another. The I.C.C. considered that its enquiry, begun the year before, could be regarded as 'an important first step' in the general investigation authorised by Congress. State commissions were invited to assist, a 'very large number' of briefs were submitted, oral evidence was taken, exceptions and replies were filed. The Commission announced the scope of the case in January, 1940, and the proceedings were finally concluded in July, 1944. A comprehensive report has now been issued

<sup>1</sup> Section 4 of the Interstate Commerce Act. There is a great body of law, and as much literature discussing the reasons for and effects of this provision. The practice arose from the fact that in a country as large as the U.S.A., many railroads are faced with fierce competition (either from other railways or from water carriers) between their terminals, and none at intermediate points. It will be clear how much a trader's sense of justice would be (and was) outraged when freight was hauled between terminals at a lower rate than he had to pay for carriage to an intermediate point along the same line.

<sup>2</sup> 262 I.C.C., 447 at p. 520. See also *Board of Investigation and Research Report on Interterritorial Freight Rates*. 78th Congress 1st Session, House Document 303.

occupying almost 300 pages and reviewing in great detail classifications and class rates over the whole of the area considered.<sup>1</sup>

The Commission found that all three classifications were unjust and unreasonable on the ground that "the substantial number of differences in the (class) ratings that now existed, result, and will result in the future, in undue and unreasonable preferences and advantages, prejudices and disadvantages as between shippers and receivers of freight in interstate commerce, and as between classification territories in violation of section 3 (1) of the Interstate Commerce Act." The Commission held that the classification must not only group commodities according to the "accepted principles of classification recognised by (them)," but that class rates should stand in certain established proportions to each other. They required carriers therefore to prepare a single classification which could be applied throughout the whole country. They remarked that "the general basis of the Official Classification, including the percentage relation between the classes, would be just and reasonable for application uniformly by the respondents (rail carriers), and should be so established by them within a reasonable time." The Commission finally prescribed the percentages, ranging from 400% to 13%, which each class rate should bear to the rate for Class I.<sup>2</sup>

The examination of class rates in Part II of the report provoked some equally far-reaching conclusions. The Commission found both that class rates within each territory and between territories were unjust and unreasonable, and that class rates in Official territory gave an unreasonable advantage to shippers and receivers of freight in that territory, and subjected shippers and receivers of freight elsewhere to an undue and unreasonable prejudice and disadvantage. They held that, in order to be just and reasonable, a single scale of class rates should be applied over the whole of the territories and between the territories considered in this case, roughly that is, over the whole of the United States east of the Rocky Mountains. The maximum lawful scale of class rates (appended in a table, expressing, in cents per 100-lbs. the Class I rate for distances varying from 5 miles

<sup>1</sup> Class Rate Investigation 1939, No. 28,300 and Consolidated Freight Classification No. 28,310, 262 I.C.C. 447, decided May, 1945. The report contains among a mass of other information an excellent account of American railroad classifications and class rates and is strongly recommended to the student.

<sup>2</sup> 262 I.C.C. 447, Ultimate Findings, Part I, p. 509.

40 cents to 2,500 miles 375 cents) is said to be about 15% higher than the current Official scales after allowing for the increases granted under authority of the Fifteen Per Cent Case in 1937-8.<sup>1</sup>

A direction to apply a single classification throughout the whole of the United States and the prescription of one scale of class rates in all districts except Mountain and Pacific territory in the Far West will not prove readily acceptable to carriers and shippers; nor were the Commissioners themselves unanimous in this determination. They remarked, in Part III, that the "just and reasonable" rates which they had prescribed could not be formulated until the new classification had been drawn up; and they recognised that much time must elapse before a classification conforming to their findings could be submitted for their approval. In the meantime, however, proposing "a simple method of rate revision which could be applied immediately," they ordered that rates within Southern, Southwestern and Western Trunk Line territory, and between these territories and Official territory shall be reduced by 10%, subject to certain specified minima; and that in Official territory the permissible maximum rate should be increased by 10%. Railroads in Official territory would be free as before to charge rates less than the maximum, provided that they are reasonable, create no undue preference, and inflict no unjust discrimination; but their discretion would be further restrained by the fact that added to preferences already prohibited, favouring particular persons and particular places a preference in rate favouring one region or territory compared with another now becomes undue and unlawful.<sup>2</sup> This "ad interim" adjustment of the class rates became effective from the date on which the order should be entered. This was twice postponed, the second time until January 1st, 1947. Finally, at the suit of nine states in Official territory, the Commission's decision in the class rate case (but not apparently their rulings in respect of the classification) was suspended by the Federal Court in the Northern district of New York. The injunction, for the time being at least, is temporary and it is not yet (1946) known whether the suspension will be made permanent, nor whether it will be sustained by the U.S. Supreme Court.

<sup>1</sup> 262 I.C.C. 447, *Ultimate Findings*, Part II, p. 700; and Appendix 10. See also *Lochlin Proceedings of 58th Annual Meeting of American Economic Association*, p. 472.

<sup>2</sup> Part III. *Ad Interim Class Rate Revision*, p. 702.

## SECTION 3

*State control of road transport.*

Jurisdiction over transport by the new motor vehicle as it grew to be of commercial importance fell naturally to each state, since by the Constitution there lay the police power to regulate the use of highways. The Supreme Court, in two important cases,<sup>1</sup> heard in 1926 held that state authority could not restrict an operator of motor buses or motor trucks engaged in interstate commerce, except in the interest of public safety or as a means of conserving the highways. The interstate operator is still subject to the driving laws, insurance requirements, safety regulations, rules of construction and the police code of the several states through which he passes ; but no state can limit the number of his vehicles, the frequency of his services, nor prescribe his rates and commercial practices.

Control of bus and truck services began in the West and South-West, among the states in which the burden of highway construction is heaviest owing to the sparsity of population, and the influence of the railroads strongest—the railroad in some cases indeed is the largest state taxpayer. Thence regulation spread to the East, and by the middle thirties all but a few states had passed laws giving their state commissions powers more or less comprehensive over intra-state motor carriers of passengers and property, carriers that is, who operated wholly within the state. The details of the statutes vary from one commonwealth to another, but the principles are everywhere much the same. Motor carriers are divided into three groups—common carriers, those who accept traffic from all and sundry ; contract carriers, who take traffic only from those with whom they have agreements; and private carriers, who carry their own goods. Common carriers are often sub-divided into “regular route” and “irregular route” truckers, the latter including for example the jobbing haulier and the furniture removal contractors.

Common carriers, almost invariably, have to secure certificates of convenience and necessity entitling them to operate and contract carriers normally require permits. These certificates and permits, being required “not so much with a view to safety or to the conservation of the highways, but primarily for the

<sup>1</sup> Buck v. Kuykendall 267 U.S. 307 ; and Bush Co. v. Malory, 267 U.S. 317.

purpose of protecting the public interest by excluding unnecessary and wasteful competition, and for determining what persons or companies are best able to serve the public,"<sup>1</sup> are more or less difficult to get and the fees may be high. Interests of special importance in the particular state concerned, *e.g.* farmers, lumbermen, cattle ranchers, are often exempt or specially privileged. Many states also require common carriers to publish and file their classifications, rates, and so on with the state authority; and contract carriers, though less often, may be asked to submit copies of their agreements. A minority of states, going even further, give their commissions authority to determine classifications for truck freight and to fix maximum and minimum charges. These last are powers rarely used, owing to the obvious administrative difficulties of enforcing a law which no one wants to obey upon a number of small concerns spread over a wide area. But the obligation to secure a certificate or permit is widely enforced although many intra-state carriers sought, and often with success, to evade the requirement—by making a detour across a state line for example, by falsely representing themselves as one of the exempt classes, or by "buying" the freight from the consignor and "selling" it to the consignee, thus qualifying in law as a private carrier hauling his own goods rather than a public carrier requiring a certificate.

In the geographically large states of the South and West, which often exceed in extent many a European country (Great Britain is no larger than Idaho, and Texas in area at least is bigger than France) a regulation of motor carriers confined to domestic traffic within the state worked reasonably well. Except in a few well marked instances, little commercial traffic over the highways went outside the state boundaries—the distances were too great for profitable operation in competition with the railways, except for such freight as household furniture on which much might be saved in the packing. But in the East, distances between one state and another are generally much less—Delaware and Rhode Island, for example, are no larger than Lancashire and Cheshire respectively, and the area of the six New England states combined does not exceed that of England and Wales. When therefore Eastern legislators, pressed by the railway and other interests, began to follow the example of their Western

<sup>1</sup> Motor Bus and Motor Truck Operation, 140 I.C.C. 685 at p. 737.

colleagues, they raised the difficulty first, that many motor carriers were genuinely engaged in interstate commerce since they trucked regularly into another state, and second, that if a man's route did not legitimately cross a state line it could easily be made to do so. In either case the result was the same, and a trucker who ran into a neighbouring state in the course of his journey, either because his way led thither or because he had purposely, but unnecessarily made it do so, became an interstate carrier. As such he was free from control by either state and consequently was regulated by none. The Federal Government was the only competent authority and the Congress had not as yet availed itself of its undoubted constitutional right to control transport by highway between the states. To the clamour of the railroads, aggrieved by the inroads which motor competition was already making, there was thus added pressure from state commissioners and legislators, fearful lest the "integrity" of their own control of intra-state motor traffic might be jeopardised by the freedom enjoyed by an unregulated competitor, the interstate carrier. At the same time, as the state of trade worsened during the early thirties and the competition among road hauliers became greater, the established carriers began to think that, by submitting to a measure of Federal regulation of interstate traffic, they might hope for some protection from the "uneconomic" competition of the many unsubstantial men whom the trade attracted, the "wild-catters" of whom dreadful stories used to be told.<sup>1</sup>

<sup>1</sup> Not many state officials and other public men of the time had the solid faith in competition expressed by Commissioner Woodlock. Concurring with the opinion of the majority in *Motor Bus and Motor Truck Operation* (140 I.C.C. 685 at p. 750) he remarked, "Regulation is not in itself a good thing. The less regulation that is necessary, other things being equal, the better for the community. It is necessary in the case of public-service utilities because of their semimonopolistic nature. Transportation in general is not *per se* of such nature; transportation by railroad is. Transportation by motor bus and motor truck does not necessarily depend upon monopolistic or semimonopolistic organization or performance. It is manifest that at the present time these services are much more largely of a competitive than of a monopolistic nature. For that reason the need for regulation, except in so far as concerns the public safety, is not wholly clear. This being so, regulation should proceed with caution and only in response to demonstrated needs. The great complexity of modern life has already compelled the centering of enormous power in regulatory bodies such as this commission. I do not view with satisfaction extension of the province in which that power is exercised, save under clearly demonstrated necessity for such extension. 'Hasten slowly,' it seems to me, is the only safe policy to be followed in matters such as those dealt with in this report. Let experience teach us." This case was decided in 1928—and the Commissioner's opinion might still be reflected upon with advantage.

Each state, sovereign by the Constitution in its domestic affairs determines its own highway safety code, rules of construction and use, rates of tax, fees and so on. All states levy highway taxes and some exact carriers' fees, often heavy, which may depend upon the weight of cargo and length of haul, upon the type of vehicle or upon the financial results of the carriers' business. Some states demand specific types of insurance and many require an out of state carrier to post a bond as surety for his liabilities to the state through which he is running ; to file financial statements and to appoint agents for the service of process and so on. The powers of the state to impose restrictions "necessary to conserve the highways" have also been widely interpreted. The permitted size of the vehicle, its length and maximum gross weight vary prodigiously from one state to another, from about 20,000 lbs. in Kentucky and Tennessee to more than 120,000 lbs. in Rhode Island, Nevada and the District of Columbia.<sup>1</sup> Nor is there any uniform code of identification marks, lights and so on. What is lawful in one state may very well be unlawful in another and a truck or bus equipped for a trans-continental haul by night is as gaily lit as a Christmas tree. This diversity of practice amounted in the opinion of some to a substantial barrier to trade between the states, a form of domestic protection which certainly infringes the spirit of the Constitution if not the letter. The proposal to subject interstate carriers to Federal control consequently received some support from this quarter, on the ground that ultimately state commissions and state authorities might be brought, if only by force of Federal example, to conform to a more uniform practice and so to free once more the flow of domestic trade between the states.

#### SECTION 4

##### *The Transportation Act of 1920. Valuation and the 'fair' return.*

The Federal Government, like the British Government, had assumed complete operating control over United States railroads during the War of 1914 to 1918 ; and that experience led legislators in the United States, as in Great Britain, to think that a solution of the recurrent problem of the "weak" road,

<sup>1</sup> Co-terminus with the capital city of Washington.

those railroads, that is, which from sparseness of traffic or adversity of working conditions are chronically in financial difficulties, might be found in the consolidation of the many independent railways into a few large systems. There was all the more reason for concern in the U.S.A. since the railroads of that country compete fiercely with each other, and there is not that restraint and effective centralisation of authority in matters of common concern which, in England, is exercised by the Railway Clearing House. Many of the weaker American roads owing as much to pressure of competition from their larger neighbours as to unfavourable economic situation or to downright bad management, were (and are) continually in and out of bankruptcy. The disturbances caused by receivership and re-organisation can become a menace to the stability of the railroad service and indeed to the public regulation of transport itself. The re-organisation of a bankrupt road has in the past been seized upon as an opportunity for promoting the financial interests of the reconstructors at the expense of stockholders and traders, and many a road has emerged from re-organisation with a capital structure so overloaded with bonds that it was marked at once as a candidate for bankruptcy in the next depression.

The railroads were returned to their private owners in 1920, upon the enactment by Congress of the Transportation Act.<sup>1</sup> This measure, among other things, exempted railroad mergers from the restraints of the Clayton and Sherman antitrust laws, if the schemes were approved by the I.C.C. ; and provided for the consolidation of the railroads of the United States into a limited number of systems. "The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, *competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained.* Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ *uniform* rates in the movement of

<sup>1</sup> Cf. ; the (British) Railways Act, 1921,



competitive traffic and under efficient management *earn substantially the same rate of return upon the value of their respective railway properties.*" The Commission was also given authority to approve consolidations voluntarily proposed by the railroad themselves which might be in harmony with the plan and in the public interest.<sup>1</sup> Sensible that it was "impossible to establish uniform rates upon competitive traffic" without enabling the prosperous lines to earn abnormally large profits and at the same time condemning the unprosperous to an unfairly small net income the Congress provided for the recovery of earnings which might accrue to any carrier in excess of the rate of return allowed by the I.C.C. under authority of the Act. One half of any net revenue in excess of 6% was to be paid to the Commission and held in a contingency fund available for use in furthering generally the public interest in railway transport, by making loans and otherwise assisting carriers to provide additional capital.<sup>2</sup> The resource of compulsory amalgamation, adopted by Parliament a year later was not open to the U.S. legislator. Any such scheme might have been declared unconstitutional since an unwilling partner could have claimed that an enforced merger, particularly with a less prosperous road, amounted to that deprivation of property without due process of law which is expressly prohibited by the Constitution.

Congress, in the Transportation Act of 1920, attempted to relate railway rates and charges to a fixed level of earnings rather than vice versa and sought to express the authorised earnings as a rate of return upon the value of railway property.<sup>3</sup> The valuation of railroads, and of other public utilities, is extensively used by both state and Federal authorities as a test of the reasonableness or otherwise of the rates and charges of these undertakings. As early as 1898 the Supreme Court had ruled that a carrier is entitled to a "fair" return upon the "fair" value of property used for the public convenience and that the public in its turn can expect to pay no more than the service is really worth. Speaking for the Court in the celebrated case of *Smyth v. Ames*, Mr. Justice Harlan said,

<sup>1</sup> Transportation Act, 1920, Section 5 (4) and (5). The requirement that mergers should be in harmony with the plan was later repealed by the Transportation Act, 1940. (*Author's italics*).

<sup>2</sup> Transportation Act, 1920, Section 15(a).

<sup>3</sup> The same principle expressed in another form underlies the British Railways Act 1921.

"We hold . . . that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."<sup>1</sup> This case was concerned in the first instance with the validity under the 14th Amendment of certain maximum rates which had been fixed by a state commission, but the support of the rule was frequently claimed by one side or the other in subsequent proceedings before the I.C.C. and elsewhere. The Commission thereupon began to press the need for an official valuation of railway property. At much the same time, though for quite another reason, the group of Western Senators led by Robert la Follette, were ably and insistently urging their conviction that, despite rates of dividend not unreasonably high, railways were over-capitalised and rates therefore exorbitant. Congress was finally persuaded and the Valuation Act became law in 1913.

This measure directed the I.C.C. to assess the value of carriers' property used for purposes of transportation. Work began immediately and by 1922 the Commission had arrived at a provisional valuation of \$19 billion. The task was immense. The property had been laid down over half a century or more, during which prices and costs of construction had fluctuated considerably. Besides problems of accounting, difficult as they undoubtedly were, valuation raised large questions of principle. Was the "fair" value the actual cost, accumulated from the time the equipment was laid down and depreciated up to the present day; should the Commission estimate the cost of replacing at current prices road bed, track, rolling stock and so on; or should they adopt some quite other method of assessment? These issues involved the rights of property and contract guaranteed by the Constitution and were inevitably carried to the Supreme Court.<sup>2</sup>

<sup>1</sup> 169 U.S. 466 at p. 546, quoted by Sharfman, "*Interstate Commerce Commission*," Part I, p. 75, note.

<sup>2</sup> The literature of valuation, both legal and economic is immense. The English reader will find a good account of this particular problem in Sharfman, "*Interstate Commerce Commission*" *passim* and in "*The American Transportation Problem*," by Moulton and Others, Part IV.

No final decision was reached until 1929. In that year, the Supreme Court held, in a suit involving an inconsiderable carrier, the St. Louis and O'Fallon R.R. that the methods by which the Commission had computed the value of that carrier's property infringed the constitutional rights of the owners. This ruling swept away the work of twenty years, work upon which the Federal Government alone had spent over \$40 million, without allowing for expenditure incurred by the railroads themselves.

No attempt was made to contest the actual rate at which the fair return had been fixed ; but the question of constitutional right was again involved immediately the Commission came to recover earnings which exceeded this rate. It could not have been otherwise, since the Supreme Court, by refusing to accept the valuation itself thereby made unconstitutional the standard against which the excess was measured— $5\frac{3}{4}\%$  of the estimated "fair" value ! As events turned out, the roads earning more than a "fair" return were not the wealthy prosperous carriers hauling the great tonnages of traffic, but the poor properties, which were continually in and out of the hands of receivers. The richer roads had been well able to apply a part of their profits to the improvement of their equipment, while the poorer roads had not. The value of the formers' property therefore was great compared with nominal capital and the "fair" return high in relation to the usual rate of dividend. The physical property of the latter, on the other hand, had so far depreciated that a net operating revenue, no more than enough to pay interest on the bonded debt, might well exceed the "fair" return. The reason was simple—but the whole business became nevertheless absurd when the legality of recapture was tested, not by suits against wealthy and well-known railroads but by proceedings for recovery of "excess" earnings against the Dayton-Goose Creek R.R. Two years later the owners of this insignificant and bankrupt railway applied for permission to abandon their property on the ground that gross receipts from working the line did not meet the day to day operating costs ! In the end, the "fair" return and recapture were repealed retroactively by the Emergency Transportation Act of 1933 (section 206a) and the suits were dropped. The Commission when reviewing applications involving railway rates and charges is now required to "give consideration to the effect of rates on the movement of traffic".

to "the need . . . of adequate and efficient . . . service at the lowest cost consistent with the furnishing of such service " and to " the need of revenues (sufficient) to enable the carriers . . . to provide such service."

## SECTION 5

### *Railroad Consolidation.*

The first plan for a general consolidation of the U.S. railroads under authority of the Transportation Act, 1920 was drawn up, at the invitation of the I.C.C., by Professor W. Z. Ripley of Harvard University in 1921. The scheme was exhaustively considered in hearings held throughout 1922, 1923 and 1924 but no agreement with the carriers could be secured. Finally, in 1929, upon Congress refusing for the second time to relieve the Commission of a duty which it had come to believe could not be satisfactorily discharged, a " tentative final plan " was published. This proposed the creation of 21 systems, based, with one or two exceptions, upon the existing groupings of the principal carriers and their generally recognised subsidiaries. The scheme embraced all line haul railroads. Terminal and switching companies were not allocated between the groups, the Commission considering that these properties should be unified within the terminals they served. The Commission's plan for twenty-one systems was no better received than Professor's Ripley's original proposal for nineteen. None of the important carriers was prepared to accept it without modification. The three major Eastern systems, for example, the Pennsylvania, the New York Central, and the Baltimore & Ohio could hardly be expected to accept without protest a scheme which proposed two new competitors for the traffic between the Middle West and the Atlantic seaboard—one formed around the Chesapeake & Ohio and Erie group, the other, an entirely new system based upon a combination of the Wabash R.R., the Lehigh Valley R.R., and the Seaboard Air Line. This last, the " Fifth System " as it was called, alone might have been the cause of indefinite delay since the Wabash and the Lehigh, the two properties upon which it would have relied for entry into Chicago and New York respectively, were in fact owned by the Pennsylvania. The Commission finally

recognised the potential strength of the opposition which this part of the plan might rouse and in 1932 a modification was published, reducing the number of eastern groups from five to four.

Progress towards outright consolidation of the sort anticipated by the Act in the meantime was almost at a standstill. The Commission could not approve schemes proposed by the carriers which did not conform to the "tentative plan" and the carriers themselves would not agree to the partners chosen for them. This did not prevent all mergers between railroads. Some acquisitions by one railroad of another were authorised by the Commission; and holding companies could purchase a controlling interest in more than one railroad without the formality of the Commission's consent. The Act indeed, by raising the issue of consolidation, precipitated just that scramble for properties thought to be of strategic importance which helped to defeat the "tentative final" plan. During this time the Pennsylvania extended its control over the Wabash and the Lehigh Valley, reached out into New England and down through the South, while the Van Sweringen brothers virtually unified in the Alleghany Corporation, the Chesapeake & Ohio and the Erie, partners in the "fourth" eastern system, with the Missouri Pacific, the main constituent of a southwestern system. Mergers such as the latter, and there were a number, created precarious financial empires rather than economic units for railroad operation. Many did not long survive the crash of 1929 and their corporate misadventures helped to discredit for the time being at least the whole principle of consolidation. The late Commissioner Eastman in an opinion in which he dissented in part from the decision of the majority in the Consolidation of Railroads Case, remarked that there was at the time "very little sentiment (in favour of consolidation) among either shippers or railroad officers" and that "there (was) reason to believe that the country was becoming considerably alarmed by the progress of consolidations and unifications of industry in general."<sup>1</sup> Five years later as Federal Co-ordinator, he summarised the principal causes of the failure of this attempt at consolidation:

- "1 Consumption is dependent wholly upon the voluntary action of the carriers. No matter how good a plan it may be, it can only be made effective to the extent that it is to their liking.

<sup>1</sup> 159 I.C.C. 522 at p. 555 decided December 9th, 1929.

- 2 Independent carriers have in general found it impossible to effect consolidations by mutual agreement, subject to the approval of the Commission. The prevailing method is for one carrier to acquire a controlling interest in the stock of another, or for some agency to acquire such interests in the stocks of both, prior to arranging for a consolidation or other unification. Such operations drive up the price of the stock which is being acquired, often to unwarranted levels, and usually involve a diversion of railroad cash which could better be used for other purposes. The results are particularly unsound when borrowed money is used to acquire these stock equities.
- 3 Even if a consolidation be arranged and finally approved by the Commission, considerable amounts of cash will now usually be necessary to take care of dissenting minority interests. The inability of the railroads to obtain cash during the depression has halted progress in consolidations and unifications.
- 4 It is very difficult, if not impossible, to devise a plan which conforms to the elaborate specifications of the act, and any plan can only meet these specifications temporarily, owing to continual change in underlying industrial and financial conditions.
- 5 The rapid development of competition with the railroads from other forms of transportation has made the emphasis in the act upon the preservation of railroad competition unnecessary in the public interest."<sup>1</sup>

## SECTION 6

### *Rail and road carriers in boom and depression. The Emergency Rail Transportation Act of 1933.*

The people of the United States enjoyed a very much greater degree of prosperity during the boom years of 1924-1929 than the inhabitants of Great Britain. The depression which followed was relatively more severe. Measured in terms of national income, the United States was about half as well off in 1932 at the bottom of the depression as in 1929 at the peak of the boom. The drop in income in Great Britain between the same two years was much less, probably no more than 15% (both comparisons at current market prices). U.S. agricultural output fell, in terms of value, from \$6,772 million to \$2,354 million; mining from

<sup>1</sup> Report of the Federal Co-ordinator of Transportation 1934 p. 41. (74th Congress 1st Session House Document No. 89).

\$1,919 million to \$539 million; construction from \$3,547 million to \$854 million and manufacturing from \$21,000 million to \$6,000 million.<sup>1</sup> None of these quantities, nor all of them combined, are an adequate measure of tonnage available for transport, since carriers are concerned not with the value of the net output but with the weight and volume of gross output and the number of times each ton is moved. But the prosperity of railways certainly depends upon the industrial and commercial activity of the community they serve and "if," as the Federal Coordinator remarked in his Third Report, "the products are not produced, or people do not travel, railroad traffic falls off accordingly."

The Class I railroads did not as a whole earn the "fair" return upon the "fair" value of their property during the twenties, as those terms were defined by the Transportation Act of 1920. Nevertheless, the railroads as a whole were reasonably prosperous. Between 1927 and 1929, 4% and 5% was earned upon the nominal capital invested in railway securities, and an average return well exceeding 7% was paid on the three-quarters of railroad stock ranking for dividends at the time. Compared with this degree of affluence, carriers suffered badly in the depression. During the three years from 1932-1934 inclusive, the proportion of stock on which any dividend was paid fell to a third or less of the total and that third received a rate no more than  $4\frac{1}{2}\%$  in 1932, rising to 6% in 1934. The remaining two-thirds got nothing and an average return of less than 2% was earned upon railway capital as a whole. The modest recovery of 1934 was maintained throughout 1935, 1936 and 1937, but in 1938 the rate on all stock receiving dividends slumped again to  $4\frac{1}{2}\%$  and net earnings on the whole capital invested dropped to  $1\frac{1}{2}\%$ . At the same time the number of bankrupt carriers rose to over one hundred and 77,000 miles of road were in the hands of receivers or trustees. The table appended<sup>2</sup> compares railway traffic and revenue in the three boom years of 1927, 1928 and 1929, with the three slump years of 1932, 1933 and 1934, and the prosperous war years of 1942, 1943 and 1944.

Industrial depression was not the only reason for the loss of railway traffic and the fall in earnings. Another and equally

<sup>1</sup> *Statistical Abstract of the United States, 1943.*

<sup>2</sup> Selected statistics of U.S. Railroads. Appendix, p. 267.

potent cause was the "extraordinary growth of competitive forms of transportation . . . the development in a comparatively short span of years of thousands of miles of hard-surface highways teeming with millions of automotive vehicles. Traffic domains which for years the railroads regarded as exclusively their own are now everywhere penetrated with competition from the highway vehicle. This is true of both passenger and freight traffic. There has also been a rebirth of inland waterway competition, coastal and intercoastal water competition has grown more intense, pipe lines have invaded the gasoline as well as the crude oil traffic, the great coal traffic has been curtailed by the incursions of fuel oil, natural gas, and hydro-electric power, the airplane has taken its place in the transportation scene, and there has been a tendency for industry to decentralize and spread for the very purpose of avoiding transportation costs."<sup>1</sup> How much of this loss of traffic was due to depression and how much to competition it is unfortunately impossible to tell. In his Second Report, the Co-ordinator presented figures "derived (understandably) from rather fragmentary data," which showed that, in 1932 intercity trucks were carrying about half as much traffic (by

TABLE 18

	1932		1929	
	Tons		Ton-miles %	Ton-miles %
	ooo's	%		
Steam railways ..	678,854	53.9	73.9	72.9
Great Lakes ..	39,544	3.1	7.8	15.8
Pipe lines (petroleum)	80,029	6.3	6.2	5.2
Intercity trucks ..	299,768	23.8	9.4	4.2
Inland Waterways ..	151,276	12.0	2.5	1.4
Electric railways and airplanes ..	11,661	.9	.2	.5
Total ..	1,261,132	100.0	100.0	100.0

Federal Co-ordinator of Transportation, 2nd Report, p. 3.  
73rd Congress, 2nd Session Senate Document No. 152.

<sup>1</sup> Federal Co-ordinator of Transportation. 3rd Report 1934, 74th Congress, 1st Session House Document No. 89.



weight) as the railroads ; and that compared with 1929 their share of the total ton mileage had doubled.

On the passenger side, railway losses were, if anything, even more serious. There the principal competitor was the private car rather than the intercity and long distance bus. In that land of broad straight highways, motor registration duties are low, there is no horsepower tax and fuel is cheap. The private car consequently is often the most economical as well as the most agreeable means of locomotion, particularly for those who do not mind driving a powerful machine from 300 to 500 miles a day. The standard railroad fare, 3.6 cents a mile in the early twenties was brought down in the thirties to 1.5 cents in the West, and 2 cents in the South. In the east the pace was set by the Baltimore & Ohio R.R. and finally, although only after vigorous protest from certain other railroads, coach rates in Official territory were reduced to 2 cents a mile.<sup>1</sup> But these attempts to compete were unavailing and the persistent loss of passengers was not stopped until gasoline was subjected to severe rationing after the outbreak of war (1942).

The motor carriers, although bearing in U.S. as in the U.K. a considerable share of the responsibility for the railroads' distresses, were suffering themselves from the combined effect of industrial depression and over supply in their own trade. It is difficult on a question so little documented as truck competition for the foreign observer to arrive at any objective conclusions. Certainly, were it not for such obvious evidence to the contrary as new trucks and expanding facilities, he would have inevitably concluded that during the years of depression from 1931 onwards intercity trucking in the U.S.A. was a trade in which the condition of business life was nasty, brutish and short. Matters apparently did not mend with the passage of time. In a proceeding opened in 1938, the I.C.C. found that motor carriers in Central Freight Territory caught between rising costs and rates forced down by pressure of competition among themselves, were earning gross revenues appreciably less than gross costs. They were working, according to the testimony at an operating ratio of 104% instead of the figure (85%) which the Commission considered reasonable "in order that a reserve may be accumu-

<sup>1</sup> The distinction in the U.S. is between day coach and Pullman. The Pullman passenger has always paid a supplement in addition to the railroad fare and he now pays in addition the higher railroad standard fare of 3.6 cents a mile.

lated to provide security for periods of recession in traffic and emergencies such as floods and other disasters.”<sup>1</sup>

The alarming condition to which the depression combined with the road competition had reduced rail carriers was among the first of the problems to engage the attention of President Roosevelt after his inauguration on March 4th, 1933. The Emergency Railroad Transportation Act, approved on June 16th of the same year, among other things, created the temporary office of Federal Co-ordinator of Transportation. Commissioner J. B. Eastman was appointed and it became his business to encourage carriers subject to the Interstate Commerce Act to formulate plans such as pooling of services and terminal facilities which might lead to economies in operation ; and to investigate any means, whether provided in the Act or not, of improving transportation throughout the country (sections 4 and 13). The Act, in keeping with the whole trend of thought underlying the National Industrial Recovery Administration specifically prohibited the railroads from exploiting one obvious source of savings, namely labour. “The number of employees in the service of a carrier shall not be reduced . . . below the number shown on the payrolls . . . during the month of May, 1933 . . . nor shall any employee . . . be in a worse position with respect to his compensation for such employment . . .” (Section 7b). This was a provision which, in the opinion of most experts at the time, deprived the Act of much of its value.

The Co-ordinator set to work with enthusiasm. During the three years he was in office he produced four main reports and many studies, each a mine of information upon the particular subject discussed. Stimulated this time by the search for economies, the question of consolidation was re-opened. One plan examined was a regional grouping of railroads into seven systems, two for the East, two for the South and three for the West ;<sup>2</sup> another was outright unification into one system, publicly owned and operated as an instrument of the Federal Government—nationalisation no less. Neither Commission nor Co-ordinator, however, considered that an “attempt to improve the transportation system by recourse either to compulsory grand consolidations or to Government ownership and operation was

<sup>1</sup> Motor Carrier Rates in Central Territory 8 M.C.C. 233 at p. 239.

<sup>2</sup> The Prince Plan, so called after its financial backer, Frederick H. Prince of Boston, Mass.

sound policy" and both recommended that "the wiser course would be to improve and extend the regulation of the various transportation agencies."<sup>1</sup> The course finally proposed by the Co-ordinator amounted in fact to a plan for subjecting to the jurisdiction of the I.C.C. all competing transport agencies engaged in interstate commerce, including motor carriers, water carriers and air lines.<sup>2</sup> A year later Congress acted upon that part of his recommendation which was concerned with the regulation of interstate motor carriers. After some modification the Co-ordinator's draft bill was passed into law as the Motor Carrier Act of 1935 and the powers of the Interstate Commerce Commission were thereby extended to include the regulation of transport by motor coach and motor bus between one state and another, and across the international frontiers into Canada and Mexico. The states retained unimpaired their constitutional rights to order domestic traffic moving wholly within the state according to their own constitutions and their own laws, and to impose such regulations on all motor traffic, interstate and intrastate, which might be necessary to ensure public safety and conserve the highways.

Passing judgment on his own plan, the Co-ordinator remarked with justice that it "will not effect a great improvement in conditions quickly, but only gradually. It will prove most successful if there is an early and pronounced upturn in general business conditions, and least successful if there is no abatement of the depression. It may not forestall further railroad bankruptcies, and the restoration of private credit will proceed slowly. Apart from general business conditions, the chief threat to the plan lies in the difficulty which the numerous railroad managements may encounter in acting collectively of their own volition to any adequate extent, and in prolonged litigation if the power of the Government is exerted to compel such action."<sup>3</sup> As things turned out, the condition of the railroads was not substantially improved nor did motor carrier rates rise significantly until the tonnage of freight began to expand in 1941, the result of war in Europe and preparation for war in U.S.A.

<sup>1</sup> Letter from the Interstate Commerce Commission accompanying the Federal Co-ordinator of Transport's Third Report.

<sup>2</sup> Third Report—see particularly the summary on page 43.

<sup>3</sup> Third Report, p. 45.

## CHAPTER X

### The Federal Motor Carrier Act of 1935.

*Note*—Throughout this chapter cases are cited by volume and page of the appropriate report. The letters "U.S." indicate decisions of the United States Supreme Court ; "I.C.C." and "M.C.C." Interstate Commerce Cases and Motor Carrier Cases respectively.

#### SECTION I

*The provisions of the Act. Certificates and permits. Restriction in U.S.A. apparently less severe than in Britain.*

The Federal Motor Carrier Act was approved on August 9th, 1935, as Part II of the Interstate Commerce Act. The Congress stated its objects in a preliminary "Declaration of Policy and Delegation of Jurisdiction" :—"It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognise and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest ; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices ; improve the relations between, and co-ordinate transportation by and regulation of, motor carriers and other carriers ; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defence ; and co-operate with the several States and the duly authorised officials thereof and with any organisation of motor carriers in the administration and enforcement of this part." The Act is a most comprehensive measure. It has sections outlining the general duties and powers of the Commission in respect of administration ; consolidation, merger, and acquisition of control by one carrier over another ; issue of securities ; the public safety ; receipts, bills of lading, accounts, records and reports ; collection of rates and charges ; and procedure for the service of process. The Act provides that all common carriers by motor vehicle of persons

or property or both in interstate commerce shall obtain certificates of convenience and necessity ; that rates, charges and classifications shall be just and reasonable, and shall create or cause no undue and unreasonable preference or advantage, and inflict no unjust discriminations. All rates, charges and classifications must be published, kept open for public inspection and filed with the Commission, in such a manner as the Commission may direct. The Commission, either upon complaint, or upon its own initiative, may review the classifications, rates and rules of any common carrier or carriers. If, after a public hearing, it finds them to be unjust or unreasonable, or that undue preferences or unjust discriminations have been created, it may prescribe the lawful classifications, rules and rates, or the lawful maximum and minimum charges. Contract carriers in interstate commerce are obliged to obtain permits, and must publish and file schedules and so on showing their minimum charges in the manner prescribed by the Commission. The I.C.C. does not have powers over intra-state motor carrier rates similar to those over intra-state rail rates allowed by the Supreme Court in the *Shreveport Case*. On the contrary, the Act of 1935 explicitly recognises and reaffirms the overriding authority of state commissions :— “ nothing in this part shall empower the Commission to prescribe or in any manner regulate, the rate, fare, or charge for intra-state transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.”

The certificate of convenience and necessity corresponds broadly with the British public (passenger) service licence, and the “ A ” and “ B ” licences issued to public and limited carriers of merchandise. There is also (or was) a provision in the British law for a public contract carrier’s “ A ” licence. But there were few applications and in practice the marked separation between common and contract carriers is a characteristic of the American system. In the opinion of some observers, the division is legal rather than economic, for there is little distinction in fact between a contract carrier having agreements with ten or a dozen shippers, and a common carrier who, from the nature of his business, does not have more than the same number of regular customers.

Private carriers, those who, in the United States as in the United Kingdom, carry none but their own freight, are left free.

The Commission has authority "to establish reasonable requirements for private carriers of property by motor vehicle," and "if need therefore is found . . . to prescribe the qualifications and maximum hours of service of employees, and standards of equipment" required to promote safety of operation.

The I.C.C. was required to issue certificates and permits without further proceeding to carriers who could show that they were in business before June 1st or July 1st, 1935. Newcomers to the trade, those, that is, who had had no *bona fide* operation before the qualifying dates can secure a certificate on a showing that they are fit, able and willing to perform the proposed service and to conform with the rules and regulations prescribed by the Commission under authority of the Act; and that the service is, or will be, demanded by the public convenience and necessity—"otherwise the application shall be denied." The certificate may specify the service to be rendered, the points between which, the routes over which, or the territory within which, the carrier may operate; and under this provision, a carrier has often been limited to carrying designated commodities for named shippers. The American trucker must prove the public convenience and need for any extension or permanent variation of his route or services, but, unlike his British opposite, he is specifically exempted under the terms of the Act from any limit on the number of his vehicles or other facilities—a most valuable concession. "No terms, conditions or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require." The British haulier's licence expires after a relatively short term and must be periodically renewed, an onerous obligation. The U.S. certificate, once issued, remains valid indefinitely or until such time as it shall be terminated by the Commission.

A contract carrier obtains permits, if, in the Commission's opinion, the service proposed is consistent with the public interest. He is naturally bound by the terms of the agreements upon which he bases his application, but he enjoys the right to vary those contracts within the scope of his permit, and to add to his equipment and facilities as required by the development of his business and the demands of the public.

The British Licensing Authorities, granted full power in their discretion to grant or refuse licences, received little guidance from Parliament beyond a general instruction "to have regard primarily to the interests of the public generally, including those of persons requiring transport as well as of those persons providing transport facilities." The Congress, declaring, among other things, its policy "to regulate transportation by motor carriers in such a manner as to recognise and preserve the inherent advantages of and foster sound conditions in such transportation and among such carriers in the public interest" was scarcely more definite. But the phrase "public convenience and necessity" has a long history in United States law. There is the mass of decisions handed down by state authorities; the Supreme Court itself has defined the term, though perhaps not very precisely<sup>1</sup> and rail carriers must apply for certificates, not only to build new lines, but also to abandon track now become unremunerative. The I.C.C. has held, it is true, that "necessity does not exist unless the inconvenience would be so great as to amount to an unreasonable burden on the community." But the Commission, unlike the British Tribunal to whom "need" in this extreme sense was the only test, must also consider the convenience of the public as well as its necessities, a combination which (to paraphrase the Commission's language) implies something less than absolute and acute need, just as it implies more than mere adequacy and availability of transport.<sup>2</sup>

The Motor Carrier Act does not protect, in language as explicit as that employed in Section 6 (2) of the Road and Rail Traffic Act of 1933, the interests of those already providing facilities for transport. Railways, state authorities and others may be and usually are represented when applications for certificates and permits are being heard; but the arguments of protestant carriers in the U.S.A. do not appear to have carried with the I.C.C. the weight allowed by the Licensing Authority to the objections against application for new "A" and "B" licences which, before the War, were raised so consistently by railways in the United Kingdom. The obligation to secure a certificate in U.S.A., no less than the liability to seek a licence in Great Britain, is intended, among other things, to restrict the motor carrying business to a capacity represented by the supposed needs of the

<sup>1</sup> 276 U.S. 475, 479, quoted in *Illinois Central R.R. Common Carrier application*  
<sup>2</sup> 12 M.C.C. 485.

<sup>3</sup> 12 M.C.C. 485; 24 M.C.C. 117; 41 M.C.C. 713. *Supra*, p. 157.

public. It is difficult to judge the relative degrees of restriction represented by the requirements which must be proved in order to satisfy Licensing Authority and Commission respectively—but it is certainly the author's opinion that the American law has frowned less severely on enterprise in the motor carrying business than the British.

## SECTION 2

*The control of motor freight rates. The two conflicting principles of cost and value prescribed respectively in New England and elsewhere.*

Parliament, when framing the Act of 1933, did not mention the rates charged by operators among the matters which the Licensing Authority must consider when hearing applications for licences, and the Tribunal has since consistently refused to allow questions of rate to be led in evidence. The Congress on the other hand expressly included in its declaration of policy "the promotion of adequate economical and efficient service by motor carriers, and reasonable charges therefore, without unjust discriminations, undue preference or advantages, and unfair or destructive competitive practices."<sup>1</sup> It is evident from the Commission's reports that the condition of the motor carrier business in the U.S.A. in 1935 and before closely resembled that which prevailed in the United Kingdom at much the same time.<sup>2</sup> "Prior to the effective date of the Motor Carrier Act, 1935, rates were made by individual carriers, at will, on the basis demanded by the particular competitive situation. There was no stability in the rates and the public generally had no means of knowing the rates being charged." Judged at least by the Commission's language, competition between carriers in U.S.A. was excessive, rate wars more prevalent and more violent than in Great Britain, and much more damaging to the operators themselves. As early as 1936, the Commission had noted that "the first result of compelling motor carriers of property to publish and file their rates had been to precipitate a downward movement." Motor carriers for the first time could ascertain the rates their competitors were charging,

<sup>1</sup> Motor Carrier Act, 1935 S. 202 (a).

<sup>2</sup> See above Chapter III.



and "the effect of such publicity was a general reduction to the level of the lowest rate maintained by any competitor."<sup>1</sup> The Commission spoke of "the demoralisation which flows from unrestrained and unreasonable competition" and remarked that the downward trend in rates had caused carriers to sustain heavy operating losses. They found that motor carriers were engaged in a competitive struggle which undermined their rates, depleted their revenues at a time when costs were rising, exhausted their reserves and brought them to the brink of financial ruin; and they held it to be "clearly their duty to keep competition within reasonable bounds and prevent it from degenerating into a mere struggle for existence."<sup>2</sup>

The British Licensing Authorities, bound by the terms of the Act and the precedents of the Tribunal, limited themselves to the narrow task of ensuring that suitable transport facilities by motor truck did not exceed requirements. The I.C.C. directed by Congress "among other things to recognise and preserve the indirect advantages of, and foster sound economic conditions in such transportation and among such carriers in the public interest," went much further. Their first object, undertaken as an emergency, was to prevent rate cutting in order to enable motor carriers as a whole to earn adequate revenues. Their second, intimately connected with the first, was "the effective stabilisation of rates and the removal of the unduly preferential, prejudicial and discriminating rates which have developed in the motor carrier rate structure."<sup>3</sup>

The Motor Carrier Act was approved in the Fall of 1935 and the rate-making provisions became effective on March 31st, 1936. Motor carriers in the several territories had already joined in the support of organisations known as Motor Freight Bureaux and Conferences, the immediate purposes of which were to publish and file common classifications, tariffs, charges, rules and so on. Time was short and no attempt was made to evolve a distinctive system of rates appropriate to the costs, operating conditions and economic characteristics of the motor carrier business. Instead, the classification published was substantially the same as the rail-

<sup>1</sup> *Interstate Commerce Commission, 50th Annual Report, 1936*, p. 74; 8 M.C.C. 233 at p. 238.

<sup>2</sup> 4 M.C.C. 68 at pp. 75 and 77; 4 M.C.C. 755 at p. 773; and 8 M.C.C. 233 at p. 238.

<sup>3</sup> 24 M.C.C. 501 at p. 625.

way classification itself, except for certain simplifications and minor adjustments. Known as the "National Motor Freight Classification," this instrument was adopted almost universally by motor carriers of property in all the territories investigated except New England. Encouraged by the Commission, the bureaux then conferred with the carriers, whether members or not, seeking agreement upon a body of class rates which, having the consent of the majority of the carriers concerned, could be uniformly applied throughout the area or along the routes governed by the particular bureau. These meetings were well attended, and apparently successful. The acceptance or otherwise of a rate or group of rates depended upon the votes of the interested parties and, although there were a considerable number of objections to particular commodity rates, the bureaux were able to claim that, at least in respect of the general principles of classification and class rates, they spoke for the majority of the carriers. The Interstate Commerce Commission, either on its own motion, or upon application by the bureaux concerned thereupon heard four principal cases—Middle Atlantic States, Central Territory, New England and Trunk Line.<sup>1</sup> In each, the Commission incorporated in its order substantially the classification, class rates, exceptions, commodity rates and so on which had been accepted by the rate bureau after discussion with the carriers. Particular attention was paid to operating costs and revenues both of individual truckers and of the general body of carriers in the area. Rates which were obviously unremunerative or which seemed likely to yield little or no revenue above the direct cost of obtaining and conveying traffic were disallowed. The minima finally prescribed were the lowest rates which, in the Commission's opinion, would afford a reasonable compensation for the service rendered and provide motor carriers, as required by law, with a revenue sufficient, under honest, economical and efficient management to enable them to offer adequate and efficient transportation at lowest cost. Owing to the subsequent growth of traffic and revenues during the war, the Commission has since modified or cancelled the orders establishing minimum rates; but those

<sup>1</sup> Rates over Freight Forwarders Inc. 4 MCC 68; Motor Carrier Rates in Central Territory 8 MCC 233; Motor Carrier Rates in New England 8 MCC 287; Trunk Line Territory Motor Carrier Rates 24 MCC 501. These reports are models of their kind, and give an excellent account of the condition of the motor carrier business at the time.

parts which prescribe classifications, class rates, rules and regulations have been continued.

The immediate result of these proceedings has been to apply, in Trunk Line and Central Territory, a motor freight classification essentially indistinguishable from the railway classification and so to establish throughout the largest industrial market of the United States a system of truck rates constructed on the same general principles as those which underlie railway rates. Within this wide area, stretching from New York State in the East and North to the Mississippi River in the West, and Tennessee and North Carolina in the South, charges for motor freight now follow railway practice, and allow for the value of the merchandise offered for transport in addition to the costs of carrying it. The Commission was well aware that this would be one consequence of its orders. "Inasmuch as the rail rate structure was originally constructed with regard to what the traffic will bear, or in other words, to the value of the service and still retains these characteristics to a considerable extent, the charging by motor carriers of rail rates imports this same characteristic into the motor rate structure, with the result that rates are often higher than the cost of service would justify."<sup>1</sup>

Motor carriers in New England, anticipating Federal control, had studied the costs of hauling freight by road before the Act was passed and were thus able to prepare a classification especially adapted to the needs of highway transportation. The class into which any given commodity is placed depends upon the quantity which can be loaded into a 10-ton truck (the largest vehicle commonly used in New England) and the class rate is assessed at such a figure that the truck load of freight will always yield the same revenue irrespective of the particular commodities conveyed.<sup>2</sup> The Commission remarked that the New England classification represented a very different theory of rate-making from that embodied in the National Motor Freight classification

<sup>1</sup> 24 M.C.C. 501 at p. 513.

<sup>2</sup> 8 M.C.C. 287 at p. 291. See also 2 M.C.C. 530 at p. 532:—"The New England class rates "are constructed by the use of a formula which gives weight to the material elements of the operating, pick-up, and delivery costs of numerous carriers in this territory, and is intended to yield a 10 per cent. profit above the costs. The 5th class rates are the base rates and in each class the rates decrease as the weight of the shipment increases. Seven weight divisions are used, based on the theory that costs vary with the size of the load carried, although not necessarily in proportion thereto." This account should be compared with the practice of British hauliers reported in Chapter III above.

prescribed in Central and Trunk Line territory—the first allowed only for the cost of carrying the traffic and gave no weight to the value of the goods themselves, whereas the second took into account both the value of the freight and the expense of the haul. Deeming “further experimentation” to be clearly “desirable” and preferring, sensibly, to defer a final choice while “awaiting the results of further and more extensive experience” the Commission accordingly prescribed (in New England) for the time being the classification and class rates proposed by the New England Rate Bureau.<sup>1</sup>

Shippers, preferring generally the New England principle by which “motor carrier rates, particularly class rates should be based not largely upon rail rates but rather upon a determination of costs of service in which the weight density of commodities would be one of the controlling factors” protested against the application of the railway classification to the motor freight business in Central and Trunk Line Territory, on the ground that they would be deprived in part, of those “inherent advantages” of motor transportation to which they were entitled by law. Their objections were overruled. The carriers (in Trunk Line Territory) were able to show that the actual rates proposed by the Shippers’ Committee were unreasonably low; and the Commission argued further that motor and rail carriers, being competitors, must make their rates on the same general principles. They remarked in the one case, “It is clear that as matters now stand, motor carrier rates cannot reasonably be constructed without regard to the competitive rates of other carriers. It also follows that, to the extent that such competition makes it necessary to go below full allocated cost plus a reasonable profit on some rates, there must be an opportunity to go above that standard on other rates if adequate earnings are to be obtained.” In the other they said that “to set a minimum limit for motor carrier rates based not on out of pocket cost but on full allocated cost without setting a similar limit for railroad competitors would have unfair results.” Although doubting whether a system of rates free from the influence of value would be in the public interest they held (not without reason) that a sudden change, even if it were practicable, would be most disturbing. The Commission nevertheless admitted that “competition in transportation

<sup>1</sup> 8 MCC 287 at p. 321; 24 MCC 501 at p. 523.

between different types of carriers has a tendency to increase the importance of cost of service as a factor in the making of rates"; and foresaw that a time might come when rail rates, assessed entirely on the cost of carriage, would be assimilated to road charges rather than vice versa. Five years later (May, 1945), the Commission again observed that competition in transport was reversing the relative weights previously attached to value and cost in the determination of transport charges. They concluded that, "generally, weight density is now the dominant consideration in determining classification ratings. This does not mean that value and other principles of classification are completely eliminated from consideration; but it does mean that the value of an article does not control the rating to the extent that it formerly did."<sup>1</sup> The principle at issue in these cases—which rule of motor rate-making is the more appropriate to the present circumstances of the American economy, has not yet been decided. But the question is to be examined, exhaustively one hopes and in detail, in two comprehensive investigations of motor carrier classifications and class rates which are now pending before the Commission.<sup>2</sup>

### SECTION 3

#### *Railway rates and road charges.*

The I.C.C. unfortunately has made no comprehensive enquiries into the general relationship between motor carrier rates and those of the railroads comparable in scope with their studies of motor and rail carrier classifications. Their published reports indicate however, that in Central and Trunk Line territory motor carrier class rates, on the adoption of the National Motor Freight Classification, were generally much the same as the railway class rates, or possibly a trifle less. In New England, a territory in which comparison is naturally obscured by the difference in classification, the Commission concluded that motor carrier class rates were generally lower than the corresponding rail class rates.<sup>3</sup>

<sup>1</sup> Motor Carrier Act, 1935, S. 202 (a); 8 M.C.C. 233 at p. 249; 24 M.C.C. 501 at pp. 513/515; 262 I.C.C. 447 at p. 482.

<sup>2</sup> Motor Freight Classification, M.C.C.-150 and Motor Freight Class Rates, M.C.C.-200.

<sup>3</sup> 8 M.C.C. 233 at p. 236; 8 M.C.C. 287 at p. 297; 24 M.C.C. 501 at p. 507. See also 262 I.C.C. 447 at pp. 558 and 681.

No more than the smallest proportion of traffic by both rail and motor is carried at class rates. Much the larger share is conveyed at commodity rates, particularly of that freight for which road and rail compete. Both rail and motor carriers have put in numerous commodity rates lower than the minimum class rates and other exceptions to the classification. The competition of another carrier, a private or contract carrier or the railroad is allowed by the I.C.C. as an argument justifying a motor commodity rate less than class rate, provided that the competition is real and not merely feared or expected; and rail carriers in turn have sought and gained approval for special commodity rates to meet the competition of motor trucks. The Commission has generally been willing to approve commodity rates which a motor carrier could show afforded a reasonable compensation provided that the rate was not inconsistent with (that is, different from) other rates for the same or similar merchandise in the same territory; and provided that all shippers in the territory and not merely one or two could take advantage of the rate.<sup>1</sup> Many applications for motor carrier commodity rates have been reviewed in detail; but it is not easy to determine from this mass of evidence whether motor carrier commodity rates on the whole exceed or under-cut the competing rail commodity rates. From the Commission's insistence on reasonable compensation, however, and from certain general references it appears that, except in New England, truck commodity rates were usually equal to, if not greater than, the competitive commodity rates established by the railway. In New England at the time (1938) truck commodity rates, particularly for hauls up to 50 miles, seem if anything to have been generally lower than the corresponding railway rate.<sup>2</sup>

Rail carriers, in 1938 and again in 1942, sought permission to increase their rates.<sup>3</sup> These applications were granted in part. By 1943 growth of rail traffics and revenues had removed the justification for the higher rail charges and the wartime con-

<sup>1</sup> Otherwise an undue preference or unjust discrimination might be created, which is expressly forbidden by law.

<sup>2</sup> 8 M.C.C. 233 at p. 257; 8 M.C.C. 287 at pp. 302/3; 24 M.C.C. 501 at p. 551. The New England motor carriers saw no justification for truck commodity rates lower than those maintained by the railways except possibly to meet water competition, but there was no evidence that this desirable condition had been reached.

<sup>3</sup> Fifteen Per Cent Case 1937-1938, 226 I.C.C. 41, and Increased Railway Rates, Fares and Charges 1942, 248 I.C.C. 545.

cessions were withdrawn. Motor carriers' minimum rates had also been raised from time to time and, since theirs is, or was, considered more a problem of too little rather than too much revenue, these increases have been continued. It now appears that class and commodity rates by truck generally exceed railway class and commodity rates by about 5%, at least for distances over which motor carriers can normally compete. Shippers have recently (1945-1946) been arguing that the need to enforce minimum rates by law has passed, since motor carriers are no longer endangering their finances by rate-cutting, and the Commission now seem ready to accept the conclusion that if truck rates are to be fixed at all, they should determine the reasonable maximum rather than the minimum.<sup>1</sup>

The jurisdiction of the I.C.C. extends, it is true, only to carriers in interstate commerce. Intra-state motor carriers, wholly subject to their local state commission, own twice as many trucks as interstate carriers ; but only one-third the number of tractors and trailers, the usual equipment of a line haul motor carrier. Not many motor carriers in New England and Central Freight Territory, particularly among those who compete regularly with the railroad, confine their operations within the boundaries of their home state ; and of those who do a number are members of Rate Bureaux and Conferences to which the interstate carriers also adhere. Definite information on this point is lacking, but it is reasonable to suppose that the rates charged by intra-state carriers operating on regular routes will not be very different from the rates asked by the interstate carriers in the same district.

#### SECTION 4

##### *Similarities and differences between conditions on the two sides of the Atlantic.*

Motor carrier class rates in the U.S.A., it appears, have much in common with road charges in Great Britain ; but there are certain important points of difference. The New England carriers have evolved a method of rate-making essentially indistinguish-

<sup>1</sup> See Commissioner Eastman's dissent in the Trunk Line case, 24 M.C.C. 501 at p. 625 ; and the Examiner's report in the rehearing of the New England Case, sheets 12 and 17.

able from that applied by the British hauliers—there is nothing to choose between the considerations which are (or were) in the mind of a haulage contractor in Great Britain when deciding a quotation and the principles applied by the New England Rate Bureaux as described by the I.C.C.<sup>1</sup> But in Trunk Line and Central Territory the classifications and class rates proposed by the carriers and approved by the Commission conform to railway practice and allow for the value of the merchandise in addition to the costs of carrying it. British hauliers have not constructed classifications of their own, nor have they, at least since the earliest days, based their charges on the railway model. According to the best of the evidence, road charges in Britain varied from one (railway) class of goods to another by considerably less than the competing railway rates and tended to gravitate toward a uniform charge per ton irrespective of the merchandise conveyed.<sup>2</sup> There is no sign of any such tendency among motor carrier rates in U.S.A. Motor freight rates both inside and outside New England appear, if anything, to be somewhat higher than corresponding railway rates.

The U.S. railroads, unlike the British, are principally organised for traffic in very large lots indeed, the carload of twenty and thirty tons at a time, and for very long hauls.<sup>3</sup> Less than carload consignments, and the same is probably true of short hauled freight, are a small proportion (less than 10%) of traffic in manufactured goods, and a much less percentage of the total tonnage of freight. One effect of these differences may have been to confine motor carrier competition in the United States by length of haul rather than by class of merchandise as in the U.K. Motor carriers in Trunk Line Territory, for example, found it unprofitable to transport low rated commodities at class rates beyond certain distances. In the New England case, it was reported that “as distances increase beyond 50 miles, rail competition becomes more important,” and that “for extremely long hauls the cost of truck transportation prevents any possibility of the motor carriers competing with the rails.” The chart facing p. 282 indicates the

<sup>1</sup> See above p. 96, and compare 8 M.C.C. 287 at p. 294 “A witness for the New England Motor Rate Bureau testified that the class rates subject to the New England classifications are based on the average cost incurred by New England carriers in performing the transportation service, plus a margin of 9 or 10 per cent. over this cost for profit. The costs on which the truckload rates are predicated are terminal expense and line-haul expense.”

<sup>2</sup> See charts *supra*, facing p. 282



considerable economies which even in Britain can be earned from traffic in large consignments. It is always possible that if the (British) General Railway Classification had provided for all classes of goods in twenty, thirty or forty ton lots instead of allowing for loads no greater than six tons, traffic might have been distributed between road and rail in the U.K. as much by weight of consignment as by value of merchandise, and the margin of competition between the two by (railway) class of goods would consequently have been less sharply marked than it was reported to be in Chapter IV, Section 1.<sup>1</sup> The explanation is at least plausible and an elucidation of the difference which appears to subsist in this respect between road and railway rates in the U.S.A. and the U.K. forms a worth-while subject for further enquiry.

It was noted, in Chapter VII above that "road services (in England) are operated regularly only between the big towns and busy areas. Road hauliers only carry as a general rule to places whence return loads are to be had . . . For any service which cannot offer so much the contractor charges a rate equivalent to the costs of running his lorry out and home. Such a charge is likely to be greater than the railway rate."<sup>2</sup> A similar phenomenon, it appears, may be observed in the U.S.A. In both the Central Territory and the New England reports the Commission remarked that motor carriers were charging higher rates from places at which a small volume of traffic originates and terminates, and lower rates between points exchanging a heavy flow of traffic. "The normal rates (in New England) have been lowered to some extent when traffic moves in large volume and the competition is keen, and raised when the volume is small or operations indirect."<sup>3</sup> In the New England case the Commission expressed its dissatisfaction with these departures

<sup>1</sup> The conditions of traffic within a small and in some ways relatively self-contained community such as the Province of Nova Scotia admittedly resemble neither the circumstances of U.S.A. nor of the United Kingdom. But it is nevertheless worth remark that truck charges in that Province appear to lie between the 3rd and 4th Class railway rates. The first four class rates in the Canadian Classification apply to merchandise in less than carloads; the lower classes (5 to 10) include only carload lots. Truck rates in Nova Scotia are thus equivalent (or were in 1939/40) to the lowest class rates at which l.c.l. traffic is conveyed; and higher consequently than the class and commodity rates at which carload freight is conveyed. See the author's "*Road and Rail Transport in Nova Scotia*," *Reports of the Nova Scotia Economic Council*, Vol. VI, King's Printer, Halifax, N.S., 1942.

<sup>2</sup> Above p. 112.

<sup>3</sup> 8 M.C.C. 233 at p. 253; 8 M.C.C. 287 at pp. 297 and 322.

from the "distance" formula, from the single mileage scale, that is, applied to all hauls of the same length and motor carriers were admonished to remove these "inconsistencies" and "incongruities" from their rate structure. When the case was subsequently reopened, "little relation" was found "between the present class rates and short-line distances between the larger cities of New England. Between the smaller points the class rates bore less relation to distances, and there were numerous instances where the class rates to some destinations were considerably less than the rates to intermediate points on the same route. Situations such as these create a condition of undue preference of the larger cities and undue prejudice to the smaller communities . . . (which) can be corrected by the prescription of class rates based on the most direct routes." It was recommended therefore that class rates should be determined according to a simple distance scale calculated "with relation to average load factors prevailing in the three general areas" into which the territory is divided and the length of haul computed as the shortest distance over hard-surfaced highways between the base points served.

A statutory obligation to carry, it was concluded in Chapter VIII becomes an onerous liability if rates do not adequately allow for differences in cost. The application of this principle in the form of an equal rate for an equal distance in the (British) Schedule of Standard Charges was an important contributor to the British railways' pre-war distresses, and more important, it was certainly the chief architect of a distribution of traffic between road and rail, the reverse of economic.<sup>1</sup> A successful attempt by the Interstate Commerce Commission to affect motor carrier charges with a comparable disregard of costs would obviously do something to avoid the reproduction in the U.S. of a similar state of affairs. But railways in the United States as in Great Britain "jointly operate a homogeneous system of transportation. The motor carriers . . . are . . . a mere aggregation of hundreds of individual carriers whose operations, many of which are very small, are disconnected to a greater extent than they are connected."<sup>2</sup> One would certainly expect, at a first glance, that over so wide an area as the United States, the costs of working the most

<sup>1</sup> Above p. 182.

<sup>2</sup> 8 M.C.C. 287 at p. 324.

## CHAPTER XI

### The Decline of Private Ownership

#### SECTION I

*British railway companies amalgamated into four systems intended to be of equal earning power.*

The policy underlying the Railways Act of 1921 was suggested by the Rates Advisory Committee in 1920. The Committee thought "it would be desirable to have one uniform scale of rates for all of Great Britain, and that by further adopting continuous mileage a simple system of railway rates easily understood by the trader should be brought into force ; but the objections appear(ed) to (them) to be insuperable." The Committee regretted that it would "be impossible to adopt uniform rates for the whole of Great Britain."<sup>1</sup> One of these objections was the variety of economic circumstances surrounding the separate railway companies of the time. Charging a scale of rates common to all lines, the more prosperous railways can earn a large revenue, others correspondingly less. "Some serve a thinly populated agricultural area, others a populous area with large mineral output, others again areas with large industrial works." The framers of the Act of 1921 sought to avoid this difficulty by amalgamating both classes of line into one organisation. The groups were so arranged that each consisted of a nucleus of the prosperous lines supporting a quota of the poorer. All were required to charge the Standard and Exceptional rates on the one mileage scale ; and the financial stability of the four amalgamated companies was assured by fixing that scale at the level which would (or so it was hoped) permit the better paying properties in each to earn revenue to cover, in addition to their own costs and capital charges, the operating deficits of the less profitable, plus the standard return upon the capital of the whole undertaking. The proposal made originally to group the Scottish lines into one undertaking was dropped for this very reason. It was considered

<sup>1</sup> *Report on General Revision of Railway Rates and Charges*, Ministry of Transport, Cmd 1098, 1920, p. 15. Compare U.S. experience related in Chapter IX, Section 4 and 5 above.

likely "that the rates (might) have to be fixed so high that traders (would) be unable to compete successfully with those in more favoured areas, and that even with the increased rates, the revenue of the proposed Scottish group would not be sufficient to give a fair return upon the capital invested."

Owing to the exuberant optimism of railway promoters in both Britain and U.S.A., many miles of line were constructed in the nineteenth century which did not and could not pay with the traffic to be got. A railway demands a heavy initial investment in track and equipment. The traffic required to provide revenue to cover the direct costs of carriage and to maintain the equipment in good order is small compared with the volume needed if a return upon capital is to be earned after full working costs have been met, and adequate allowance made for maintenance and renewal of equipment, way, and works. The only lines which "pay" in the usual sense of the word are those conveying the larger traffic and earning a revenue out of which can be met, in addition to the costs of operation, maintenance, and renewal, the annual charges upon the capital sunk in constructing the railway.<sup>1</sup> Some lines were making this much and more since the four amalgamated companies taken together earned a net return which even in the worst years of the thirties never fell below one half of the standard net revenue, after provision had been made by each system for all charges on account of operation, maintenance and renewal. But once competition from road transport had become formidable railway operation as a whole became a less prosperous enterprise. The surplus incomes of the lines which still "paid" could no longer meet the deficits of those which did not and the amalgamated companies as a whole could not earn their standard dividends.

The American system naturally, does not offer the same protection to capital invested in a "weak" road which was provided by the Railways Act of 1921.<sup>2</sup> Far from the poorer lines being supported by the earnings of the more prosperous, an independent road has to rely upon revenue from traffic local to its district supplemented by the "divisions" it obtains from through

<sup>1</sup> See Walker "Road Competition and the Regulation of Railways," *Economic Journal*, 1936.

<sup>2</sup> The Interstate Commerce Commission may, in certain circumstances, authorise short and financially weak roads to charge higher rates, obtained by adding an arbitrary amount—hence the name "weak road arbitraries."

traffic passing over its tracks. The element of competition in the U.S.A. from other railways is pervasive. The "just and reasonable" rates which may be charged on local traffic will certainly be judged in relation to the rates charged for same merchandise for similar distances by other and possibly more affluent carriers in the same district ; and the divisions of the through rates will clearly depend upon the number and convenience of recognised alternative routes.<sup>1</sup> Some lines, not in themselves worth very much, may be acquired by their larger neighbours for strategical reasons ; but the really indigent roads are left to the receivers. Short of compulsion, no solvent carrier will assume their liabilities! The owners, often another railroad, their hopes of a return finally destroyed by truck competition, have in many cases sought permission from the I.C.C. to convert the enterprise into a highway transport company or to abandon it altogether. Not all have applied for this authority nor have all applications been granted. The public interest, represented by a town or a plant wholly dependent upon the railroad for rail connection may override the interests of the carrier. The service has to be maintained and the thin traffic line, its financial condition aggravated by legislation and working rules prescribing full train crews and so on, consequently remains an acute contemporary problem in the U.S.A.

## SECTION 2

*Summary of War-time experiences in U.S. and U.K.*

The British and American transportation systems fared very differently during the War of 1939 to 1945. Motor carriers in the United States suffered, it is true, from gas and tyre rationing, shortage of spares, and an inability to obtain new equipment. But, apart from some few temporary acquisitions of Federal control, railroad and trucking companies alike remained in private hands, and the principles of regulation established by Congress were not sensibly modified. Conditions in Great Britain changed much more drastically. The amalgamated companies

<sup>1</sup> In a country so large as the United States there is always an immense variety of possible connections between any two widely separated points—it is said, for example, that, including sea and inland waterways, there are no less than 10,000 different 'through routes' between New York, N.Y. and Dallas, Texas.

from the outset (September, 1939) were operated by the Railway Executive Committee as agent of the Minister of Transport, proprietors and creditors receiving an annual rent of £38,633,000. The Services commandeered a great many road vehicles (principally passenger coaches) at first rather indiscriminately and an elaborate system of fuel rationing, drawn up in anticipation of war early in 1939, was instituted. Carriers' "A," "B" and "C" licences were continued indefinitely as "Defence Permits"; and, beginning with a meat carrying pool encouraged and recognised by the Ministry of Food in 1940, government control was extended until it came to embrace responsibility for the working of long distance hauls, journeys, that is, exceeding 60 miles, and for all Government traffic. Set up in 1943 as an integral part of the Ministry of (War) Transport, the Road Haulage Organisation came to control outright 388 of the larger undertakings and hired all other vehicles employed on long distance work for more than 75% of the time. The Ministry of Transport was said to work in this way, upwards of 34,000 goods motor vehicles. The Minister's control expired in August, 1946 and the undertakings were handed back to their owners, until such time as the Government's plans for nationalisation should be complete.

The wartime experience of transport in the two countries had at least this in common, that undertakings in both enjoyed a remarkable increase in traffic. So much must have been obvious to all who travelled in either country during the war and compared the crowded passenger trains and (in England at least) the goods trains standing block to block along the slow lines with the plentiful accommodation and empty tracks of pre-war years. The Ministry of Transport has not yet published returns relating to the traffics conveyed by its Road Haulage Organisation and in any case comparative pre-war figures are quite lacking. But wartime impressions of the accession of passengers and freight are amply confirmed by the railway statistics of both countries. In Britain, passenger journeys (including services but excluding season ticket holders) rose from 849 million in 1938 to 1,039 million in 1944; merchandise traffic, other than coal, from 92 million tons to 142 million, larger even than the peace time maximum of 139 million tons recorded in 1913. Coal traffic, owing principally to restriction of output, fell by 20 million tons.

Financially too, the British railways did uncommonly well. Assisted admittedly by an increase in passenger fares and freight charges, estimated at  $16\frac{2}{3}\%$ <sup>1</sup> and a lengthening of the average haul from 59 to 79 miles (107 to 112 if general merchandise alone is considered), gross receipts from passenger train traffic rose from £75.3 million in 1938 to £194.6 million in 1944; and from goods, from £87.8 million to £196.1 million. Expenditure naturally was greater, but in a slightly less proportion, rising from £137.7 million in 1928 to £301.2 million in 1944. The companies consequently earned net in the later year, £93.2 million, almost twice the Standard Net Revenue, a sum which before the War (of 1939) would have brought into immediate operation the safeguards of Section 59 (3) of the Act of 1921.<sup>2</sup>

The increase in traffic on U.S. railroads was even more remarkable, reflecting in part, the relatively greater output of U.S. industry during the War. 916 million passengers were carried in 1944, and 1,565 million tons of revenue freight were originated. The figures for 1938 were 455 million passengers and 820 million tons of merchandise. The U.S. railroads in 1944 earned a net income before deduction of tax of \$3,155 million, almost four times the corresponding figure for 1938 (\$830 million); and the record figure of 1944 (\$3.4 billion) might have been exceeded had not consent been withdrawn to the higher rates granted in 1942. These statistics testify impartially to the success of private operation in the United States and public in Great Britain, but unfortunately prove nothing, except the fact that railways do exceedingly well when trade is brisk and competition not severe, whoever may be responsible for working the properties!

### SECTION 3

#### *Proposals for voluntary co-ordination in U.K.*

Parliament in 1921 had intended to assure each amalgamated company from one year to another of the degree of prosperity reached in 1913 by the constituent and subsidiary companies taken

<sup>1</sup> In December 1940. Rates were raised again in July 1946.

<sup>2</sup> The financial returns include the earnings and expenditure of the London Passenger Transport Board.

together. This intention, during the years between the wars was not fulfilled. Railway net revenue was always less than the standard ; and the commercial and financial position of railway companies deteriorated steadily. The loss of traffic in passengers and "General Merchandise" can be mainly ascribed to the growth of competition by road motor ; but part of the slump in railway revenue is the result of diminishing traffic in coal, minerals and heavy merchandise. Road competition had no hand in this ; these losses were the result of industrial change, and the collapse of the staple trades in the "Special Areas."

Inland transport in Great Britain immediately before the War presented a problem raised by the impact of a great number of small road motor carriers each of whom must cover his own costs or go bankrupt upon a relatively few large railroads organised in such a way that the price of rail transport depends upon the average costs of the whole, rather than those of any particular. A Royal Commission, an industrial Conference (the Salter Conference), and the Transport Advisory Council investigated the position of transport undertakings and made recommendations.<sup>1</sup> Acts were passed from time to time to assist the competitive position of the railway companies. Taxes on motor vehicles and motor fuel rose steadily. There was some recovery of traffic and revenue in 1936 and 1937. A year later, owing as much to a steady rise in railway costs as to a fall in gross receipts, the result of trade recession, net revenue dropped to £27,900,000, a figure scarcely greater than the receipts realised at the bottom of the depression in 1932 and 1933, and hardly more than half the standard net revenue offered by the Act. The railway companies thereupon presented a memorandum to the Ministry of Transport, setting out the inequitable conditions under which they were required to compete. They asked that :—

- “(a) The existing statutory regulation of the charges for the conveyance of merchandise traffic by railway, together with the requirements attached thereto, including such matters as classification, publication, and undue preference should be repealed.
- (b) The railways, exactly like any other forms of transport, should be permitted to decide the charges and conditions

<sup>1</sup> *Reports of Royal Commission on Transport*, July 1929, October 1929 and 1931. Cmd 3365 and 3416 (1929) ; and 3751 (1931) : *Report on Conference of Road and Rail Transport*, 1932 : *Report on Service and Rates Transport Advisory Council*, 1937.



for the conveyance of merchandise which they are required to carry.”<sup>1</sup>

The companies urged their claims on the public as a “Square Deal,” and the memorandum itself was remitted to the Transport Advisory Council for consideration.

The Council, following the example set earlier by the Salter Conference, did not sit as a commission of enquiry taking evidence in public. Members discussed the matter among themselves and, concurrently with these deliberations, meetings were arranged between railway representatives and the trading and other interests concerned. The Council made no independent suggestions of its own but recommended for adoption the principles and procedure common to all the agreements which had been reached between the interested parties. The statutory obligation to provide reasonable facilities and through rates was to remain and the conditions of carriage were still to be subject to statutory determination. But the classification, standard charges (and therefore the standard revenue), exceptional rates and agreed charges, disintegration, the “Equality Clause” and undue preference, were to go. In their place voluntary (not statutory) conferences were suggested to consider proposals by railway companies for any general increase of charges. Failing agreement, any proposed increase would become effective after the lapse of one month’s notice ; but it was to be referred to a Tribunal for determination. All traders or bodies of traders retained the right to appear before the Tribunal, where they might challenge an increase, or apply for a reduced charge, either because the charge was in itself too high, or because the rates paid by other competing traders were low in relation to those paid by the applicant. Mr. Burgin, the Minister at that time, on first receiving the railway companies’ memorandum informed the Council that “as at present advised, he is inclined to the view that in the existing circumstances there is, *prima facie*, a case for some material relaxation of existing statutory regulations, provided that due regard is had to the ultimate objective of the co-ordination of all forms of transport,”<sup>2</sup> and shortly before the war (1939) the late Captain Euan Wallace on behalf

<sup>1</sup> Memorandum submitted to the Minister of Transport, reproduced as Appendix I of Report by Transport Advisory Council on the Proposals of the Main Line Railway Companies to the Conveyance of Merchandise by Rail.

<sup>2</sup> Report by Transport Advisory Council, p. 2-3.

of the Government of the day, promised legislation implementing these recommendations. But a successor in office (Lord Leathers) speaking in the House of Lords, 1943, declared that the "Square Deal" failed to reach the root of the problem and that some more radical solution would still have to be found.<sup>1</sup>

Among the series of agreements negotiated as part of the "Square Deal" was one between the railway companies and a "Liaison Committee" representing public and limited carriers ("A" and "B" licences) outlining a plan for the regulation of railway rates and road charges. This Liaison Committee had already been constituted in January, 1938 to evolve the "road rates structure" recommended by the Council in an earlier report on "Service and Rates."<sup>2</sup> Their principal suggestion had been the institution of a Central Consultative Committee to be formed by voluntary arrangement between the parties, to consist of representatives of road and rail with power to appoint subordinate regional committees. The immediate task of this Committee was to "consider and formulate the principles on which voluntary agreements can be entered into in regard to the rates to be charged by road and rail for merchandise traffic, either generally or in respect of particular commodities or particular routes or areas, with due regard to the effect of such agreements on other interests."<sup>3</sup> The interested parties did not await legislation before establishing this machinery. A Committee was set up forthwith, and an (unofficial) Road Rail Conference emerged. This body continued its activities throughout the war and in the opinion of a group of the larger hauliers "covered much useful ground in the exploration of the relationship of the respective goods rates and conditions of carriage for the two forms of transport."

Finally, as a result of these prolonged deliberations, the railway companies, represented by the Railway General Managers' Conference, and for the road side, the Road Haulage Association (formed by the amalgamation of the six principal associations) were able to present in July, 1946 a joint memoran-

<sup>1</sup> Report by Transport Advisory Council, pp. 2-3, and Lords Parliamentary Debates, Volume 129, 1942-43, p. 384. The interested student might look at Chapter X of the earlier edition of this book, published in 1942, for a more detailed discussion of the Square Deal.

<sup>2</sup> See a comment by the author, *Economic Journal*, March, 1938.

<sup>3</sup> *Transport Advisory Council Report on Service and Rates*, 1937, Sections 45 and 46; Appendix VI, Section 14.

dum to the Minister of Transport on the Co-ordination of Road and Rail Freight Transport. The memorandum recognised "the unfettered right" of the public "to select the form of transport (including the right of traders to carry their own goods in their own vehicles under 'C' licences) which is the most economic and convenient for their own requirements"; and the parties re-affirmed their faith "in free enterprise on a fair competitive basis" to provide, subject to public control, adequate and alternative transport facilities. The memorandum also proposed that "A" and "B" licences should accept a statutory obligation to carry "goods of the class and description in the districts and between the places specified in the licences granted to the hauliers concerned" and asked that the rates and other conditions of carriage should be enforced by law. The road hauliers undertook to formulate a "national rates structure based on road factors"; and the railways similarly agreed to "adopt a railway rate structure for merchandise . . . which is capable of correlation with the road rate structure." The suggestion approved earlier by the T.A.C. (in 1939) that the regulation of railways be relaxed, was repeated and, a most interesting addition, the parties proposed that "area organisations be formed, under the auspices of the Road Haulage industry, to provide for the conveyance of goods by road which cannot be placed direct with an expeditious handling by individual hauliers."

Following the lead of the Transport Advisory Council in their 1937 report on Service and Rates, hauliers concerned for the future of the industry have been in general support of a measure of consolidation into larger units; publication, subject to the approval of a tribunal, of rates agreed upon by the majority of the operators; and the enforcement by law of those rates upon all carriers. A number of the larger hauliers have been urging that some "stabilisation" of road transport charges at an "economic" level is required. They recognise that a road rate structure "in harmony with" the charges asked by other forms of transport, principally the railways, will not be compatible with the unlimited right of the trader freely to choose which traffic he will carry in his own vehicles and which he will deliver to public carriers by rail or road; and they realise that a system of public transport charges based throughout not on costs, but rather on the railway's principle of charging what the traffic will

bear, may tend in effect to subsidise the carriage of some commodities—those of relatively low value—and impose rates correspondingly greater than cost on other goods—those of relatively high value. This point will be familiar to the reader who has followed the argument of this book. It amounts in short to the incontestable proposition that, given a classification based on value (or one which incorporates any principle other than cost), carriers subject to that classification may always be liable to lose the best paying traffic, the freight that is, which, although highly rated, is cheap to convey, to any other carrier, in this case the private trader, who is free to determine his own charges without reference to the classification.<sup>1</sup>

The spokesmen for road transport are naturally enough the larger men. The smaller have little experience of, or interest in, anything beyond the immediate conduct of their own businesses. The former have sought, unsuccessfully, to avoid public ownership by suggesting plans of their own for the voluntary "coordination" of road and rail services. All such attempts were defeated by the jealous independence of the large number of small operators who make up the majority of firms in the business. At no time, either before the war (1939) or since has there been evidence among the many haulage contractors of a consensus of opinion sufficiently broad to give these or any other proposals a practical value and no group was able to negotiate with railways, traders, or Government with any hope that their joint recommendations however reasonable, would bind the body of hauliers as a whole.

<sup>1</sup> But see Chapter IV, Section 3 above, and compare pp. 242 and 247 below.

## CHAPTER XII

### THE TRANSPORT BILL

The railway companies have been possible candidates for nationalisation since Mr. Gladstone's Act of 1844, and it was no surprise to find transport high up on the list of immediate projects once the Labour Party was returned to office and power. Speaking in the House of Commons on November 17th, 1945, the Lord President of the Council announced the intention of H.M. Government to nationalise inland transport including the railways and long distance haulage. The Transport Bill was published a year later and read a second time just before the House rose for Christmas. The 127 clauses and 9 schedules were subsequently dispatched by Standing Committee B, with the help of the guillotine, in thirty-two sittings during February, March and April 1947.

The Bill vests the ownership of transport properties in a Transport Commission, consisting of a chairman and four members, all appointed by the Minister. The four amalgamated and other railway companies, the canal and inland waterway undertakings, and privately owned railway wagons are to be transferred to public ownership on January 1st, 1948, on the terms set out in the Fourth Schedule to the Act. No fixed date is proposed for the transfer of road transport operators, but the Commission has a statutory obligation to acquire all public and limited carriers (A and B licenses) carrying a tonnage in 1946 of which half or more was hauled a distance exceeding 40 miles. The hauliers are to receive in compensation the current value of their vehicles plus a sum which may vary from twice to five times the "net annual profit." Cases in dispute between the Commission and the (road) carriers are referred to a specially constituted arbitration Tribunal. In all the Minister considered that 2,000 to 2,500 firms might be involved, owning about 20,000 vehicles.

The actual operation of transport services is placed in the hands of subordinate bodies known as Executives. Five of these—for railways, docks and inland waterways, road transport,

London Transport and (ultimately) for hotels—are contemplated. Each consists of a chairman, assisted by four to eight other members, all appointed by the Minister in consultation with the Commission. The Executives will act as the Commission's agents and, within the limits of the powers delegated to them are to have the rights and duties of principals—they and not the Commission are the employers of transport workers, they may sue or be sued and so on.

The Commission is authorised to carry goods and passengers by rail, road, and inland waterways in Great Britain;<sup>1</sup> to provide port facilities and maintain inland waterways, to warehouse goods, operate hotels and other facilities and amenities for travellers and traders and generally to do those things which, in the opinion of the Commission are required to facilitate the proper conduct of its business. The Commission is “so, to exercise (its) powers under this Act as to provide, or secure or promote the provision of an efficient, adequate, economical and properly integrated system of inland transport and port facilities within Great Britain for passengers and goods.” (Section 3 (1)). Their businesses form one undertaking which must be conducted so that the revenue from fares, rates, tolls, dues and other charges “is not less than sufficient for making provision for the meeting of charges properly chargeable to revenue, taking one year with another”—or, in plain English, the Commission must make both ends meet over its undertakings as a whole.

Certain classes of long distance road hauliers—carriers of liquids in bulk in tank wagons, furniture removers, meat and livestock contractors, operators of vehicles constructed for large indivisible loads—and certain types of privately owned railway wagons, broadly those which have been specially built or are used for traffic of a nature which renders them unsuitable for other goods are exempt from acquisition. It is intended otherwise that the Commission shall have the exclusive right in Great Britain to operate railway services and goods motor services for distances over forty miles.

The former objective is gained once the amalgamated and other railway companies have been acquired, since nobody is likely to want to open a new line of railway and even if he did he would have to ask the consent of Parliament or the Transport Tribunal

<sup>1</sup> Air services are specifically excluded.

as successor to the Railway and Canal Commission. But the monopoly of long distance haulage is not so easily achieved. For one thing, it is a comparatively inexpensive matter to set up a new motor transport business, for another, there are the private "C" carriers to be considered, the firms who carry their own goods. The Bill overcomes the one obstacle by proposing the restriction of public carriers other than those qualifying for acquisition to a radius of 25 miles from their operating centre and the other by limiting private carriers to 40 miles. There are two general exceptions to these rules. First, the Commission, in its discretion, may permit public carriers (who, then as now, must be licensed by the Licensing Authority) to work beyond the twenty-five mile limit. Second, traders wanting to operate their own vehicles may seek permission from the Licensing Authority to carry their own goods under B and C licenses for distances exceeding forty miles. Under the Road and Rail Traffic Act 1933, the private carrier secured a licence automatically, valid for any distance. In future the Licensing Authority will have full power in his discretion to grant or refuse permits for hauls exceeding 40 miles and may attach such conditions as he sees fit. In considering an application, he is to have regard to the effect of the permission or refusal upon the Commission's business and upon the business of the applicant, in particular the saving in the costs of packing, handling and breakage and so on arising from the use of his own vehicles and from his need to connect two or more sets of premises to maintain a continuous process of production. The Licensing Authority must also conform with any direction issued by the Minister at the instance, or with the consent of the Board of Trade in order to facilitate the business of persons in development areas.<sup>1</sup>

Subject to direction, or with the approval of the Minister, the Commission may prepare schemes for co-ordinating, or promoting the co-ordination of passenger transport. Such schemes however, do not become effective until incorporated in an Order.

Between the Commission and Executive on the one hand and the travelling and trading public on the other (and not forgetting therein the remaining independent motor carriers, public and private) there stands the Transport Tribunal. This body succeeds to the jurisdiction over railway companies and road

<sup>1</sup> These proposals were subsequently withdrawn. See below p. 249 n.

hauliers previously exercised by the Railway and Canal Traffic Commission, the Railway Rates Tribunal and the Road and Rail Traffic Appeal Tribunal. One of the obligations laid on the Commission is the duty of preparing and submitting to the Tribunal a draft scheme or schemes setting out the charges which shall be asked for the services and facilities which the Commission considers should be dealt with in this way, or which the Minister may direct. These charges schemes may be based upon any principle or system which appears desirable. They may be fixed charges, with or without exceptions, maximum charges, minimum charges, standard charges and so on ; may afford special treatment either in respect of rates or services or both in specified cases or classes of cases or may leave the determination of charges, terms and conditions entirely to the Commission. The draft schemes are to be published and objections invited. The Tribunal is then to hold a public enquiry, hear the Commission and such persons as may desire to be heard and may finally confirm the draft scheme or schemes with or without alteration, or reject it (or them) "as they (the Tribunal) see fit." A scheme once approved is to be published, becoming effective on a date or dates to be specified. Application for the alteration of a charges scheme or schemes may be made by the Commission itself, by any body representative of persons using the services or facilities to which the scheme relates, or by any body constituted under a scheme of national ownership who may be similarly placed. All such applications shall be heard in public, and the Tribunal again may determine the case "as they see fit." The only limits to the Tribunal's freedom of action are the Minister's right of direction and the general instruction that "neither the Commission nor the Transport Tribunal shall do anything in the exercise of their respective powers as respects charges, and the submission, confirmation and alteration of charges schemes, which in their opinion will prevent the Commission from discharging the Commission's general duty to secure that their revenue is not less than sufficient for making provision for the meeting of charges properly chargeable to revenue taking one year with another." (Section 89). The Minister may at any time require the Transport Tribunal to review the operation of a charges scheme, may condone an undue preference, and finally, may override both Commission and



Transport Tribunal. His authority may supersede the obligation to cover costs out of revenue for Section 89 concludes with the declaration "that the duty of the Commission to give effect to such (Ministerial) directions includes a duty to make such applications and to do such other things in relation to the making or alteration of charges schemes as are required in order to give effect to any such direction."

Ignoring for the moment the details of the transfer of ownership—questions of equity with which this study is not concerned—the Bill in essence creates an administrative hierarchy of Commission and Executives empowered to do anything considered desirable to promote a properly integrated system of transport (except the manufacture of motor chassis and the building of ships exceeding 175 tons), establishes a Tribunal authorised to decide as it sees fit and subordinates both to the Minister. There is no doubt much to be said, when proposing a wholesale reconstitution of the transport market through the machinery of public ownership for a measure which presents the men selected with the responsibility and leaves them free to solve their problems unencumbered by the preconceived detailed opinions of Departments, members of Parliament, experts and the public—although the extent of Ministerial direction detracts somewhat from that attractive simplicity. This bill and the measure nationalising the coal mines are signs that the control of executive acts by the Courts—the apparatus common to most parts of the world in which the Anglo-Saxon tradition flourishes—is falling from favour in this country as a means of limiting the powers of public officials. It would have been impossible admittedly to legislate against every contingency, and judicial review both in this country and the United States, has not perhaps, always been particularly happy in its economic effects. But there is no reason to suppose that the servants of a public monopoly will not require oversight as close as the owners of a private combination. The risk is not so much that rule by Commission will be technically inefficient or uneconomical, but that they and their subordinate agencies armed with the weapon of monopoly may pay insufficient attention to the commercial requirements of traders. Against this danger, the Bill erects the slender defence of a Central Transport Consultative Committee and Area Users' Committees for passengers or goods or both.

These committees, representative of the Commission, agriculture, commerce, industry, labour, local authorities and so on, shall consider any matters affecting the services and facilities provided by the Commission other than those representations which appear to be frivolous. The Area Committees depend for their existence upon Ministerial direction. Both they and the Central Committee are appointed by the Minister and are housed and served at the expense of the Commission. Copies of their minutes and recommendations are sent to the Commission and the Minister and the Minister may incorporate any such matters in his directions to the Commission. The machinery for hearing complaints is thus provided, but the trader has lost his most effective remedy, the opportunity to take his business elsewhere and the only redress lies within the discretion of the Minister and his official advisers.

Government speakers, in debate on the second reading, offered nationalisation as the only alternative to private monopoly. They argued that competition between road and rail had been "ruinous" and represented "a waste to both sections of the industry and to the community generally."<sup>1</sup> They urged the great requirements of the transport services, particularly the railways, for new equipment and claimed unification as a necessary step to an orderly distribution of capital resources between the several claimants. The unexpected restriction of the rights of traders to provide their own haulage was defended on the ground that "C" licensees could not be allowed "to interfere with, sabotage, or undermine the work of the Commission"<sup>2</sup> by deliberately "carrying their easy traffic in their own vehicles and sending their troublesome consignments by public transport."<sup>3</sup> Ministers, wisely perhaps, refused to explain what in their opinion might constitute a properly integrated system of inland transport beyond remarking generally that they postulated "not merely cheapness, but high quality. It is the real cost of the service which counts, the elimination of unnecessary duplication and overhead charges and the closer linking of the various forms of transport so that they become mutually complementary and better methods of standardisation where desirable, and specialisation of functions."<sup>4</sup> It is otherwise left to the Commission,

<sup>1</sup> *Hansard*, Vol. 431, col. 1629.

<sup>2</sup> *ibid.*, col. 1986.

<sup>3</sup> *ibid.*, col. 1631. But see p. 249n.

<sup>4</sup> *ibid.*, col. 1994.

"a small body of persons with time to think and plan" alone to evolve the ways and means of "serving the public better than it has ever been served in the past in the way of transport and at substantially less real cost to the nation than is possible under the present system."<sup>1</sup> "Some years," it was agreed would "inevitably" elapse "before the full fruits of integration envisaged by the Bill will be seen."<sup>2</sup> Until that time, the detail of administration, the precedents governing the exercise of power, and the nature and extent of departmental intervention—in short the whole effect of the Bill—will remain unknown. At the moment, therefore, criticism of this essay in practical socialism is necessarily restricted—although something may perhaps be gained by applying to the technique of nationalisation as it is expressed in the Bill any criteria which can be elicited from the study of the inland transport business during the ten years immediately preceding the outbreak of War in 1939.

Railways are and must be large organisations. The economics of consolidation are great and a unified system can give more easily and efficiently the through working and through service which the trader requires. The transference of the British railways to public ownership does not at this stage introduce any revolutionary principle of economic organisation—the amalgamated companies now are outstanding examples of undertakings controlled by officials and not by their owners. The losses, real or supposed, of state owned railway systems abroad are not relevant. Many such enterprises, of which the French company formerly known as the "Chemin de Fer de l'Etat"<sup>3</sup> and the Canadian National are excellent examples, lost heavily in the hands of the original (and private) owners and were "nationalised" either by foreclosure as in France or, as in Canada, to maintain a railway in areas in which, owing principally to sparseness of population, no undertaking could possibly be expected to pay. Others, such as the Norwegian State Railways, must contend with operating conditions forbiddingly adverse, or, like the Deutsche Reichsbahn, were required to maintain a variety of services of doubtful value for political and strategical purposes rather than for good

<sup>1</sup> *Hansard*, vol. 431, cols. 1624 and 1995.

<sup>2</sup> *ibid.*, col. 1939.

<sup>3</sup> This publicly owned undertaking became part of the "Société Nationale de Chemins de Fer françaises" when the French railways were nationalised just before the War (1939).

commercial reasons. Nor can it successfully be argued that a private bureaucracy is universally and necessarily more efficient, more careful of the common good and more responsive to popular demand than a public undertaking. The efficiency or otherwise of a large organisation and the degree of its concern for the public's welfare depend principally, not upon the type of ownership but upon the men who are managing it. If they are vigorous and enterprising, the concern itself will display those attributes. If, on the other hand, the effective managers are themselves dilatory, unimaginative and lacking in enterprise, the whole organisation whether publicly or privately owned, will suffer from those defects. This question, which type of ownership, public or private, can provide the better guarantee that the most able and enterprising men will be chosen as managers, is the main issue raised by the nationalisation of the railways.<sup>1</sup> It is not the only question naturally but none is so fundamental, for upon that will finally depend the economy in operation, the rate at which new improvements are developed and introduced, and the extent of the service which the undertaking, however it may be owned, can offer to the public.

The original case for nationalisation depended upon the alleged propensity of industry to become progressively less competitive and more highly organised in larger and larger concerns, culminating finally in the establishment of monopoly in private hands. The preliminary statement of the Minister of Supply in the House of Commons (May 27th 1946) on the scope of his plans for the iron and steel trade furnishes an apt example. He would show, he said, "that (that) industry has in fact passed beyond the stage of free competitive enterprise and had become in the nature of a monopoly or cartel" and he rightly claimed "wide, perhaps somewhat surprisingly wide, support for this declared policy of bringing under public control primary industries which are the basis of our economic life and which have become monopolies." This argument can be applied to the railways and might be strengthened by reference to the strict public control with which the discretion of railway managers has been increasingly hedged about since Parliament first enacted legislation authorising the construction of railways. Goods motor transport, on the other hand, shows and has shown no

<sup>1</sup> See Florence, *Logic of Industrial Organisation*, Chapter VII.

tendency whatsoever toward industrial concentration. Despite restriction of entry, a steady propaganda in favour of consolidation and one or two determined attempts at large scale combination, the carriage of goods by road remains predominantly the business of the small man. The trade is indeed an outstanding exception to the rule contemplated by the general theory of nationalisation. Inland transport had been highly concentrated in the hands of a diminishing number of railway companies but since 1920, technical progress, represented by the development of the motor vehicle, has actually broken up this private monopoly and redistributed the ownership and control among a mass of small contractors. In steel there may be too little competition for the public good but in road transport the complaint is the opposite; and a case supporting public ownership from the premise of private monopoly can hardly be used without modification to defend the nationalisation of a trade in which but for the restraints of the licensing system, there would be (and was) too much competition for any but doctrinaire supporters of private enterprise.

The railway network, it was pointed out in Chapter VIII, is ubiquitous. Railway lines and stations cover the entire country, and between them the companies have established a machinery for clearing traffic which is efficient and comprehensive. "Railway companies (therefore can be and) are obliged by the statutory terms of their undertakings to convey all the traffic offered to them and to all stations on any railway system at their published standard and exceptional rates."<sup>1</sup> Road transport stands at the opposite extreme—it could not from its nature be required to discharge a parallel liability. Road hauliers are small; they do not and could not maintain depots everywhere and they could not be expected to serve every town and village throughout the country. Most important of all, before the constitution of the official Road Haulage Organisation in 1943, road operators did not dispose of a comprehensive clearing system able to exchange traffic between hauliers over any wide area of the country.<sup>2</sup>

The incorporation of the many small independent contractors under one Executive in the manner proposed by the Bill would clearly permit the road transport business to assume as carriers,

<sup>1</sup> Page 181 above.

<sup>2</sup> See above pp. 105 and 182.

liabilities similar to those imposed by statute upon the four amalgamated railway companies. The same result might have been achieved and possibly at less cost in terms of administrative machinery, by a voluntary scheme such as that outlined in the recent memorandum on co-ordination of road and rail transport. But it is by no means certain that, in the particular case of road haulage, the substitution of large for small scale organisation would, on balance, be an advantage. The proprietors of small enterprises such as the ordinary long-distance haulage concerns feel at once the direct weight of business decisions in the shape of a gain or loss in income—a powerful incentive to improvement in a trade in which technical advance is rapid. The small road carrier devotes his personal attention to his clients and, if circumstances demand, offers the special rates or facilities required by the particular case. This is a considerable advantage to the trader since he gets the service required, in the quantity asked and at the time when it is wanted ; and the interest of rival shippers in equal treatment is assured by freedom of access to the many competing carriers.

Small scale, it was concluded in Chapter VIII, is at once the principal cause of the road haulier's advantage over the railway, of the inequity, if it may be so described, of road competition, and the main source of the advantage (other than lower rates) which in the opinion of traders has been derived from motor competition. It makes no difference whether the centralisation of control is the result of public ownership or private combination—consolidation of the mass of small hauliers into one large organisation might cause the trader (and ultimately the public) to lose some or all of the benefit of motor transport, represented by the improvements in transport facilities and services made during the decade before the war (1939). Great size is inseparable from nationalisation. Large scale, whatever its other advantages, may lead to bureaucracy with its hierarchy of impersonal and distant officials, to rule by committee with its attendant delays and to the enthrone-ment of precedent. Public ownership of long distance haulage, if this centralisation of control cannot be or is not avoided, may thus injure the public interest, not because public enterprise itself is economically less advantageous than private, but because the trader stands to gain more from motor haulage services organised on the small scale than on the large.

The trader if he so chooses has so far been free to carry his own goods in his own vehicles. This liberty is now to be curtailed on the score that the competition of the private 'C' carrier with a publicly owned transport undertaking "represents a type of traffic competition which has been ruinous between road and rail in the past."<sup>1</sup> Despite advantages in cost in particular cases, traders, it appears,<sup>2</sup> are not normally able to operate long distance services as cheaply as public carriers, since holders of 'C' licences are prohibited by the Act of 1933 from hauling goods for others either as return loads or to make up a full cargo. It can only pay in the strict sense, that is cost less per ton to maintain a private fleet rather than consign by public carrier or the railway in certain limited circumstances—the trader must have a full load of his own traffic both out and home and be able to use his vehicle on the trunk journey by night and collecting and delivering by day. Long distance service worked by private 'C' carriers therefore should not embarrass the operations of a public transport undertaking if the latter's rates, following the current practice of road hauling, are assessed upon the costs of the particular service. But a system of transport charges based upon the average costs of working traffic over a wide area—one of the principles underlying railway rates in the past and explicitly recommended to the Transport Commission by Ministers in debate—is clearly incompatible with the unlimited right of the trader freely to select which traffic he will carry in his own vans and which he will send by the publicly owned carrier.<sup>3</sup>

The authorities are given the utmost possible freedom in the determination of fares, rates and charges. There is no direction corresponding to Section 29 (2) of the Railway Act of 1921, prescribing the principle upon which rates shall be constructed. Quite on the contrary—the Commission may assess such a charges scheme or schemes "as may appear desirable" and the Tribunal, after a public enquiry, may or may not confirm these schemes "as it sees fit" subject only to the overriding necessity of allowing the Commission to cover its costs and to conform with Ministerial directions. The general question of the rules which should govern price of transport was last examined by the Rates Advisory Committee in 1920. The Committee it will be remembered confirmed the accepted practice of the day at a

<sup>1</sup> *Hansard*, Vol. 431, col. 1631. <sup>2</sup> Above Chapter IV, Sect. 3. <sup>3</sup> See below p. 249n.

time when the railway had an established monopoly of inland transport.<sup>1</sup> Since then, that monopoly has been broken. The road transport business has grown from nothing to a considerable but unknown dimension and a rival principle of rate-making, based on costs of carriage by road, has become equally firmly established. Traders during the pre-war (1939) discussions revolving round the "Square Deal" refused to entertain the proposal that road rates should be the same as rail, even for the same merchandise on the quite just ground that the service each provides and the costs of working are different. This objection was reaffirmed by the Association of British Chambers of Commerce and accepted by the signatories of the Road Rail Memorandum on Co-ordination. On the other side there are those, principally shippers of low class merchandise, who have an immediate interest in the maintenance of the existing future of railway charges and can be relied upon to resist any change, such as a wholesale reduction of the rates on high-classed freight, which might jeopardise the low rates being charged at present on cheap and bulky merchandise.

The Minister in debate criticised severely the existence at the present moment of 40 or 50 million different rates. "One of the most beneficial results of this Bill" he remarked "will be if we can simplify the jungle of rate charges that now prevails in our railway and transport industry."<sup>2</sup> Traders were reassured of a free choice between rail and road "on paying the appropriate rates for the two services," and the Parliamentary Secretary, although unable to say "what the new charges system is likely to be" could "only reasonably forecast that it will not be based like all recent explorations into this problem on the need for somehow relating road and rail charges on a profit basis but on principles which are best likely to serve the national interest."<sup>3</sup> A desire for simplicity, however laudable, and the invocation of the national interest can hardly masquerade as guiding precepts of rate-making. Exempt indeed, from the Act of 1921 and in certain circumstances, from the restraints of undue preference the Commission will enjoy an even greater freedom than their (railway) predecessors. Rather than that "simplification" which the Minister hoped to see, each rate can be decided *ad hoc* and the

<sup>1</sup> Above pp. 47-49.

<sup>2</sup> *Hansard*, Vol. 431, col. 1633 and above pp. 67 and 131.

<sup>3</sup> *Ibid.*, col. 1984.



charges scheme or schemes as a whole reflect only the weight of the pressures to which the Commission and Tribunal are subject by departments, executives, traders and "those bodies constituted . . . for the carrying on, under national ownership and control, of any industry." Less even than now it may be feared will the price of transport adhere to any rule or set of rules, even supposing such consistency to be desirable !

The Commission it was explained in debate "will be able to get what experts they desire and . . . will then place before the Government and industry a charges structure which will be subject to criticism and objection and which, only after all that has been gone through, can be adopted."<sup>1</sup> That criticism and objection are heard by the Tribunal and it is the duty of that body to decide whether the charge or charges scheme will or will not be confirmed. British Courts and Tribunals have not in the past displayed an aptitude for sustained economic reasoning nor have they shown any great interest in the economic implications of the laws they are asked to administer or awareness of the economic consequences of their decisions. The Act now lays the final responsibility for determining both the transport charge itself and the relationship of one rate to another upon the Transport Tribunal. It is much to be hoped that this Court following the lead of their brethren of the Interstate Commerce Commission in U.S.A., will set a fashion and equip themselves with a qualified technical, economic and statistical staff, capable of providing expert and independent advice in the cases which come before them. The legal mind is an incisive instrument, but more than judicial capacity is now required of Tribunals charged with the task of administering measures the economic effects of which are as wide and far reaching as the expressed intent of Parliament is vague.

*Note.* The Government's decision "not to proceed for the time being with the clauses dealing with 'C' licences" was announced in Committee by the Minister on March 13th. The statement was made to allay the "increasing anxiety" expressed by traders both publicly and in direct negotiation between their representatives and the Department. The relevant clauses were duly withdrawn against some Labour opposition a week later. (Official Report, Standing Committee B, cols. 819 and 1019.)

<sup>1</sup> *Hansard*, vol. 431, col. 1984.

## ENVOI 1947.

Throughout the discussion in Parliament Government and Opposition speakers, with few exceptions, alike assumed that some form of private arrangement between road and rail, blessed with official recognition, was the only alternative to nationalisation. Limited between private and public monopoly, the British layman tends to choose the latter, a fact which may account in part for the relatively ineffective case put up by Opposition speakers. The author, however, does not admit that these two proposals exhaust the range of practical possibilities. Sustained by the evidence of his enquiries, he believes on the contrary, if he may be allowed an affirmation of faith, that inland transport offers a market in which a public authority owning the railway system might compete with private enterprise, represented by the many small road hauliers. Each, to borrow a convenient term from the late President Franklin Delano Roosevelt, would act as a "yardstick" of the efficiency of the other with benefit to both and to the great advantage of the public. In the case of the railways, already very large concerns, the onus of proof, no doubt, lies on the anti-nationaliser; but it is certainly the nationalisers who must demonstrate their case for incorporating long distance road haulage in a publicly owned undertaking combining both services. None of the parties, in and out of Parliament, have succeeded in discharging that part of the burden of proof which rests on them. The case for and against the Transport Bill was decided not by rational argument but by a counting of heads, actuated by minds which, on both sides of the House, were already closed to argument in favour of other possible solutions, even supposing such had been advanced.

Some years ago, in an article contributed to the *Economic Journal*,<sup>1</sup> the author stated the main principles upon which, so it seemed to him, the transport problem might be resolved; and this outline concluded the first edition of this book, published during the war in 1942. A detailed scheme, unfortunately could not be adumbrated. So ambitious a project is quite beyond the

<sup>1</sup> "Road Transport and Regulation of Railways," *Economic Journal*, December, 1936.

resources of private enquiry, particularly on a subject so little documented as inland freight transport in the United Kingdom.<sup>1</sup> Although the point is now wholly academic it may be worth repeating once more the obvious fact that competition and co-ordination are not mutually exclusive states. A co-ordinated transport service, as opponents and proponents of public ownership alike have too often forgotten, might be established by an industry which remains competitive just as readily as by a monopoly, whether privately or publicly owned. But "free" competition it is true could not ensure this combination—regulation is required in either case.

Free and uncontrolled competition between a large railway system and small road hauliers, if it were pursued actively by the former, could only lead to the destruction or absorption of the latter into the railways' organisation. Regulation of transport undertakings is required if competition is to be relied upon to coordinate road and rail, just as much as if that state is to be reached through monopoly. But the objects of control would have to undergo a fundamental change. Legislators and regulatory bodies in the past have aimed at a scale of rates which could be uniformly applied to all lines of railway, or at least to all lines within a wide district. These rates were based broadly on the average cost of working traffic over the system as a whole rather than on that of the particular service. Competitive organisation demands instead that transport charges should allow for any variation in the costs of providing the individual facility. That means, among other things, the end of the equality and stability which have been characteristic of railway charges both in Great Britain and the U.S.A. since public regulation became really effective. Instead, the price of transport, like the price of any other commodity would have to be high where costs are high—to the out of the way places, for the small loads and so on—and low where costs are low—between the big towns and industrial centres and for the large consignments.<sup>2</sup> As the Interstate Commerce Commission have remarked, "a sudden change (of this sort) would be most disturbing to business practice, even if it were practicable"<sup>3</sup> and, one may add,

<sup>1</sup> The lack of significant statistics has already been mentioned in the Preface and elsewhere, particularly in Chapters VII and X. See also Appendix.

<sup>2</sup> Above page 111.

<sup>3</sup> 24 MCC 501, p. 514/515.

to current theories of social progress into the bargain, for the existing trend towards the greater concentration of population and industry might be stimulated by the generally lower level of charges between the larger and more highly urbanised areas. But, whatever its other faults, a system of regulation embodying these principles would cause the small road haulier to concentrate on that freight and work those hauls for which costs by road were less than costs by rail.<sup>1</sup> The large railway in its turn would gain all the traffic and work the services for which costs by rail are the lower. Freights for which neither party had the decisive advantage would continue to be operated by both in direct competition. The business of transport would then be completely "co-ordinated", if by that term is meant anything more than mere absence of competition.

In the United States, the problem has already presented itself to the Interstate Commerce Commission as a conflict between a system of rate making based on cost, the practice of motor carriers in New (and old) England; and one which, following railway practice, discriminates between traders according to the value of their freight. The majority of the Commissioners have already expressed the opinion that, considered abstractedly, the New England (cost) theory of motor carrier rate making is the sounder although they do not agree that "every cost condition confronted by the motor carrier can or should be reflected in their rate structure." Later they doubted whether "a system of transportation rates based on cost of service alone would be in the public interest, since there would be a common rate for all commodities of a given weight density and of necessity the level of rates on low grade basic materials as well as the cheaper manufactured goods would have to be substantially increased."<sup>2</sup> The Commissioners have not yet (1946) committed themselves and the U.S. transport agencies to the one system or the other; and for the time being at least, they have understandably hesitated to extend throughout Trunk Line and Central Freight Territory a system of rates which, however preferable theoretically, might nevertheless undermine the whole

<sup>1</sup> See Appendix for a discussion of the meaning of "cost" in this context.

<sup>2</sup> 8 MCC 287 at p. 321; 24 MCC 501 at p. 514; and the examiner's report in the rehearing of the former case.

fabric of transport charges built up in the past and the commercial relations which depend upon them.<sup>1</sup>

It will be interesting in the years to come to compare the American attempt to co-ordinate through competition a privately owned and operated transport industry with the British essay in co-ordination through a publicly owned monopoly. Deliberate direction by the officials of public monopoly may seem the simpler means of "promoting an efficient, adequate, economical and properly integrated system of public inland transport." But the meaning of that language and even more how it should be interpreted in practice still have to be determined. Road and rail are two methods of performing the same service. They show strikingly different characteristics of cost and their commercial practices are not the same. Public ownership, even on the widest possible scale, does not escape these differences of costs and usage however much it may disguise their existence, and it is they which make the attempt to resolve the road-rail problem through the machinery of competition appear unorthodox, unacceptable and impracticable. Nationalisation avoids the obvious difficulties of a control exercised through the self-interest of individuals in pursuit of their own gain; but the ends of policy may be lost in the formidable mass of detail involved in organising so huge an undertaking, and fundamental issues may be decided inadvertently as an accident of administration with far reaching consequences for good or ill to the whole of the economy.

<sup>1</sup> 24 MCC 501 at p. 514-5 and the late Commissioner Eastman's dissent in the same proceeding at p. 630/631. See above p. 204 and note.



## APPENDICES

	Page
1 On the Interpretation of Cost .. .. .	256
2 On the Statistical Requirements .. .. .	258
3 Road Statistics Between the Wars .. .. .	263
4 "Other Goods Vehicles" .. .. .	264
5 U.K. Railway Statistics .. .. .	267
6 U.S. Railroads—Selected Statistics .. .. .	269

## ON THE INTERPRETATION OF COST.

The comparison of costs by road and rail is much complicated by the facts, first, that a high proportion of railway expenses is overhead, and not direct, and second, that a railway company's capital is large in amount and once invested is, for all practical purposes, irrevocably committed. The marginal costs of railway working are therefore small in relation to average cost, as these expressions are understood, for example, by Chamberlin *Theory of Monopolist Competition*, and Robinson *Economics of Imperfect Competition*. Railway plant and equipment also is remarkably long lived, and the supplementary costs (to borrow a convenient term from Marshall) represented by capital expenditure upon way and works, the provision of rolling stock and so on, are consequently of little weight in determining rate policy.

The heavy cost of constructing and maintaining highways is normally borne by the State. The motor haulage contractor uses the road with the general public and the private motorist; he compounds for his share of this expense by means of a registration duty which may be paid quarterly and the tax upon fuel. Limited thus to his vehicles and premises, the haulier's direct investment is consequently small and nothing like so specific as that of a railway. This relatively small capital is subject to a high rate of depreciation—vehicles, for example, wear out or become obsolete in a few years' time—and, in addition, both registration duty and fuel tax can be avoided by laying a vehicle up for quarterly periods. Unlike the railway company, a haulier when considering his rates and charges can be expected to keep well before him not only the direct marginal expenses of a particular piece of business (including therein the fuel tax), but also the overhead costs represented by his outlay on vehicles, equipment, registration duty, insurance, and so on. The proprietors of a railway company cannot withdraw their capital if the enterprise prove unsuccessful and the returns fall short of gross costs, direct and overhead. But the supply of road transport service is much more elastic. A haulier in a similar predicament could sell or fail to replace his lorries, use or dispose of his office, garages and warehouses for other purposes and thus recover within a quite short period of time a worth-while proportion of his investment.



In a capitalist system based on private enterprise such as the United States is today, and as Great Britain was at the beginning of war, costs by road must be interpreted as the average cost of running a privately owned and self-sustaining motor carrier business over a publicly owned highway system paid for in part or in full out of revenue raised by taxing the private motorist and the commercial user. The costs by railway on the other hand, since there is now no real prospect that any additional complete railways or lines of railway will be built, can only mean the marginal cost of working a line of railway which is already built and equipped plus, at the most, the expenses directly incurred in improving the track and other plant to meet the demands of the public for better services.

A nationalised transport undertaking would "own" the property of the railway companies outright—permanent way, rolling stock and all other equipment; and it would also acquire motor vehicles, garages, and depots together with other business assets of the road hauliers. The obligation to keep up the highway itself does not pass from the authorities in which it is now vested, the Ministry of Transport, the County Councils, and their subordinate authorities, into the hands of an operating administration, and a nationalised transport service therefore, will neither own nor be financially responsible for the road over which its motor vehicles pass.

A public corporation could no more withdraw its capital from the railway system than a privately owned company. But it would be almost as well placed as a private operator to recover all or part of its investment in road transport since expenditure upon the highway has been excluded from the costs of its road service. The terms might be somewhat less favourable than those secured by an individual haulier in like circumstances, since the market for used vehicles would undoubtedly suffer from the public ownership of commercial motor transport. But the publicly owned motor service, no less than the private haulier, will still have to compare the receipts from its motor services with the sum of the direct expenses of working the vehicles, plus the annual cost of maintaining the fleet, and consider whether sufficient remains as the earnings of capital laid out on but recoverable from the equipment. Regardless of the type of ownership the distribution of traffic between rail and

road, if it is to depend upon cost, must be governed by the relationship of *marginal* cost by rail and *average* cost by road; and this will remain true however closely the two services are co-ordinated.

The publicly owned railway need not, and should not seek to earn any return, any quasi rent in Marshall's language, upon capital inherited from the present private owners in the shape of road-bed, stations and so on; and on the same ground the publicly owned haulage system might properly claim the highways as a free gift. Once road works have been executed and the money expended, the public's capital is sunk beyond hope of recovery; roads in any case are constructed and maintained to ensure the public's right of passing and for a variety of other users. But that part of the annual expenditure upon highways for which the operation of commercial vehicles is directly responsible (if indeed it can be separately ascertained) is a cost and should be debited against the patrons of the nationalised motor transport services.<sup>1</sup>

The transference of railways and motor services from private to public enterprise will no doubt bring in train many alterations in the relations between railway rates and the costs of motor carrying; but there is no reason to suppose that this change in ownership and organisation will alter the underlying principles at issue. The conclusion therefore remains, that if a transport system is to be economically administered, the significant quantities to be compared by a publicly owned monopoly and by private enterprise alike are the marginal costs of working traffic over lines of railway already built on the one hand, and the average costs of providing and operating road services on the other.

### ON THE STATISTICAL REQUIREMENTS.

In no department more than transport do current official statistics better merit the criticisms urged in paragraph 13 of the Royal Statistical Society's *Memorandum on Official Statistics* (J.R.S.S. part II, 1943, page 149). The Committee said there :—

<sup>1</sup> See the author's *Road and Rail Transport in Nova Scotia* (Chapter VI) referred to above p. 35 note.

"So far as collection is concerned, the principal features of this mass of official data seem to have been :

- (a) That most of it was collected for some special administrative purpose or as a consequence of some administrative duty, and not for its own sake. As a result it was frequently not in the form most suitable for statistical study.
- (b) That it was acquired by branches concerned with administrative work and was therefore sometimes not properly recorded and summarised.
- (c) That in consequence of the system of collection by individual branches there was in many cases very imperfect co-ordination even between branches of the same Department in the collection of the material."

The Annual Railway Returns contain a vast amount of information principally intended for the shareholder, company accountant and engineer and much of interest to the economist statistician. The road statistics, on the other hand, compiled by those responsible for the collection of revenue and the administration of the Road Fund and its successors, contain a great deal about the classes and numbers of vehicles subject to taxes and the distribution of grants in aid of the construction of highways, but little else. No administrator had any interest in the question of goods traffic by motor until the Road and Rail Traffic Act of 1933 and no statistics consequently were assembled. Parliament devolved the responsibility for collecting road traffic statistics upon the Licensing Authorities, who, deeming such figures unnecessary for the discharge of their duties relieved license holders of their obligations under Section 16(d) of the Road and Rail Traffic Act to provide particulars of journeys made and goods carried (p.145 above).

The Area Traffic Commissioners, the Chairmen of which are ex-officio Licensing Authorities in their area, have fortunately required holders of public service licenses (bus and coach operators) to return the number of passengers carried, journeys run and so on. There are consequently quite presentable passenger statistics for pre-war years, appended to the annual reports of the Area Traffic Commissioners.

The Ministry of War Transport, responsible during the war for the operation of all long distance haulage of goods, must have found it necessary to maintain records of tons carried and journeys

run—the Road Haulage Organisation could not possibly have been administered without these statistics. But what these figures are and whether and how they can be collated with the Railway Returns is not known, since the Ministry have not yet seen fit to release them.

In the writer's opinion statistics such as the following are essential both as a continuous record of progress and development in transport and as the foundation of *any* scheme purporting "to provide or secure or promote the provision of an efficient, adequate, economical and properly integrated system of inland transport and port facilities within Great Britain for passengers and goods."

#### A. REGULAR SERIES.

- (1) Returns of railway receipts, working expenditure and traffic conveyed by passenger and goods trains as found for example in the annual railway returns.
- (2) Monthly and quarterly returns of passengers carried by public service vehicles, showing length of journey and average fare paid, and distinguishing stage, contract and express services. At present, any service charging a minimum fare of one shilling is classified as express. It would be an advantage if stage and express were redefined to correspond with the important economic distinction between a local (municipal) service and an inter-urban or country haul. The Area Traffic Commissioners should be in a position at least to make an estimate of the division between the two.
- (3) Annual returns of the numbers and capacity of goods motor vehicles licensed and in possession of carriers and the purposes, long distance or local, for which they are used. 'A', 'B' and 'C' licensees should be distinguished and it would help if retail delivery vans were shown as a separate category.
- (4) Monthly or quarterly returns of traffic originating, mileage run, and ton mileage conveyed by each class of motor carrier, distinguishing once more between long distance and local hauls; and annual returns of the working expenditure, traffic receipts, and so on of road motor services. Statistics of average receipts per ton and per ton mile, average loads and average length of haul should also be included.

The principal classes of goods should be specified separately but traffic carried by retail traders' delivery vans could be excluded.

#### B. PERIODICAL SURVEYS.

- (1) The density of freight and passenger traffic—tons and numbers of passengers conveyed per mile—over each principal section of rail and highway per annum. A tabular example, relating to the Nova Scotia railways will be found on page 47 of the writer's report to the Nova Scotia Economic Council referred to above p.35 note, and a traffic density map relating to the Canadian National Railways was appended to the report of the Royal (Duff) Commission on Railways and Transportation in Canada (1931-2). Similar maps of U.S. railroads are also prepared for the use of large investors.
- (2) The financial results of particular sections of railways, gross revenues lost if the line were closed and the direct ascertainable expense of keeping the railway open.
- (3) The (estimated) direct costs of working the several classes of freight compared with the gross revenue received from the carriage of such traffic; and the contribution made by passengers in excess of direct costs of operating the service.
- (4) The costs of carrying freight by road, and the proportion which registration duty and petrol tax make up of the whole.

A supervising Commission, charged with the general direction of five or more operating executives, is necessarily remote from the everyday detail of administration and can keep itself informed about the course of its several activities only through the medium of comprehensive statistical returns. Much was learnt during the war of the value of statistics to public departments, both for reporting upon progress and in the formulation of policy. The Transport Bill (section 4 (6 and 7)) requires the Commission to furnish the Minister with such returns, accounts and other information with respect to their properties and activities as he may direct and report annually upon their performance, policy and programme. It is to be hoped that the Commission will equip itself with an adequate Statistical Intelligence Branch and provide them with power not only to require returns from the subordinate executives, but also to comment freely upon the

significance of the figures. Only in this way can the administrator, policy maker and the independent enquirer be assured of the transport statistics required for their diverse purposes, and Parliament and the public put in a position to assess the efficiency and the economy of the Commission's services.

# ROAD STATISTICS BETWEEN THE WARS.

(1) NUMBERS OF MECHANICALLY PROPELLED VEHICLES FOR WHICH LICENCES WERE CURRENT AT ANY TIME DURING THE QUARTER ENDING 30TH SEPTEMBER

Year	Cars Taxed on Horse Power	Motor Cycles	Hackney Vehicles		Goods Vehicles			Other Vehicles	Total
			Other than Trameers	Trameers	Agricultural Vans and Lorries	Showmen's Special Vehicles	Other Goods Vehicles, including Local Authorities		
1928	884,645	712,583	95,412	13,945	2,011	1,227	302,506	40,210	2,052,539
1929	980,886	731,298	97,997	13,880	2,164	1,423	326,207	41,857	2,195,712
1930	1,056,214	724,319	101,131	13,665	2,201	1,568	344,672	43,556	2,287,326
1931	1,083,457	626,649	87,464	13,014	2,142	1,718	356,754	42,524	2,213,722
1932	1,127,681	599,904	84,950	12,468	2,185	1,737	366,178	44,464	2,239,567
1933	1,203,245	562,656	85,077	12,000	2,490	1,788	383,209	46,861	2,297,326
1934	1,308,425	548,461	85,129	11,516	7,848	1,874	403,598	50,057	2,416,908
1935	1,477,378	516,567	85,547	10,872	10,364	2,009	422,350	55,940	2,581,027
1936	1,642,850	505,779	86,009	10,260	11,603	2,169	445,455	64,481	2,768,606
1937	1,798,105	487,578	85,766	9,657	12,446	2,316	464,160	78,457	2,938,484
1938	1,944,394	462,375	87,730	8,988	13,319	2,453	479,094	95,531	3,093,884

SOURCE : Census of Mechanically Propelled Vehicles.

## "OTHER GOODS VEHICLES"—ANNUAL RATES OF DUTY

## INTERNAL COMBUSTION ENGINES CONSUMING LIGHT OR HEAVY

## HYDROCARBON OILS

				Before 1928 (Solid tyres only)	Finance Act, 1928 (Pneumatic tyres only)	Finance Act, 1931 <sup>1</sup> (Pneumatic tyres only)
Not exceeding	12	cwt	weight			
unladen ..	..	..	..	£10	£10	£10
12 cwt to 1 ton	..	..	..	£16	£15	£15
1 ton to 1½ tons	..	..	..	£26	£20	£20
1½ tons to 2 tons	..	..	..	£26	£25	£25
2 tons to 2½ tons	..	..	..	£40	£32	£30
<del>2½ tons</del> to 3 tons	..	..	..	£40	£32	£35
3 tons to 4 tons	..	..	..	£48	£38 8s.	£50
Over 4 tons, for each ton or part thereof ..	..	..	..			£20
4 tons to 5 tons	..	..	..	£54	£43 4s.	
Exceeding 5 tons	..	..	..	£60	£48	
Additional duty for drawing a trailer—						
Less than 2½ tons	..	..	..	£6	£6	£10
2½ tons to 4 tons	..	..	..	£6	£6	£15
Exceeding 4 tons	..	..	..	£6	£6	£20

<sup>1</sup> The scale now rises by ½ ton increments. The rates of duty shown in the above apply to vehicles weighing respectively 1¼—1½ tons, 1½—2 tons and so on; vehicles of 1—1¼ tons, 1½—1¾ tons and so on pay somewhat less.





# Index

- agents, local railway, limited discretion of, 179/180
- agreed charges, 55, 82-92, 132
- agreements voluntary, between railways, road hauliers, and traders—*See under*  
conferences
- Agricultural Statistics, 124
- Aitchison & Others and Dowling* (46), 161
- Alexander (Charles) and L.M.S. & L.N.E. Rly. Cos.* (45), 161
- "A" licence—*See under* licence
- Allatt and L.N.E. & L.M.S. Rly. Cos.* (14), 150 ; (33), 157
- amalgamated companies, 21, 53, 55, 107  
*See also* railway companies
- amalgamation, railway, 23, 45
- Appeal of Boyer (William) & Sons (Transport), Ltd.* (15), 151
- Appeal of C. Shaw Lovell & Sons* (24), 153
- Appeal, Court of, 84, 85
- Appointed Day, 48, 53, 67, 68, 72, 81
- associations, trade, 137, 139, 179
- Axford and Southern Rly. Co.* (35), 156/7
  
- back-loading, 102, 103, 104, 153—*See also* loads, return
- Balfour of Burleigh, Lord, 46
- Barratt and G.W., L.M.S. & L.N.E. Rly. Cos.* (8), 148 ; (26), 153
- Birmingham Chamber of Commerce, 106
- "B" licence—*See under* licence
- Board of Trade, 46, 54  
classification—*See under* Classification
- Boston Haulage Co. and Sanderson* (27), 154
- Bouis-Tilloison Ltd. and Donaldson Wright Ltd.* (29), 154 ; (46), 162
- Bowley and Wood, 29
- Boyle, Sir Courtenay, 46
- Bradshaw and L.M.S. & L.N.E. Rly. Cos.* (8), 148
- British Chambers of Commerce, Association of, 248
- British Road Federation, 164
- Brownbridge and L.M.S. Rly. Co.* (12), 150
- Buck v. Kuykendall*, 267 U.S. 307, 195n
- Bush Co. v. Malory*, 267 U.S. 317, 195n
  
- capital investment—highways, 30  
railways, 28
- carriers, canal, 44  
common, 182  
motor, British—*See under* carriers, road (U.K.)  
(U.S.)
  - certificates or permits, 195, 212-215
  - Class I, 186
  - Common, 195, 212
  - condition, U.S. and U.K. 1935, 215
  - Contract, 195, 212
  - distance formula, 225

- carriers, motor (U.S.)—evasion of regulation, 195
  - inter-city trucking, 207/8
  - inter-state, unregulated, 197
  - intra-state control, 197
  - newcomers, 213
  - New England, 218/9, 222-225
  - obligation to carry, 196, 225
  - operating ratios, 208, 226
  - regulation of, 196/7
  - statistics, 185
- road (U.K.)—*See also* hauliers ; competition, road ; traffic ; transport
  - established 144, 150, 158
  - licensing of, 143-165
  - limited (B), 144-151, 153, 212
  - newcomers, 144, 145, 149, 158/9
  - private (C), 121-123, 144, 151, 153, 195, 212, 239, 242, 247
  - public (A), 121, 134, 144, 151, 153/4, 156, 163, 212, 238, 246
  - public (passenger) service licence, 212
  - regular, 95, 104, 106
  - regulation of, 143
- U.S.—*See under* carriers, motor (U.S.)
- cartage, railway, 59, 64, 80
  - apparent loss on, 66
  - charges, 64-66, 75
- Central Consultative Committee, 234, 241
- Chamberlin, Prof. E. H., 26
- charges of road carriers (U.K.), 94-106, 107/8, 115, 126, 142, 215, 223, 235/6
  - advantage of simplicity, 120
  - agreed statutory enforcement of, 235
  - on "smalls" traffic, 113
  - minimum, 100, 112
  - not allowed in evidence supporting application for licence, 60/1
  - (*See also under* licence, carrier's)
  - rapidity of quotation, 179
  - rebate for large consignments, 99/100, 113
  - See also* rates, motor carriers (U.S.)
- Charges, Standard, Schedule of—*See under* Standard Charges
- Charman and Southern Rly.* (8), 148
- Clark, Colin, 125
- classification, 22, 36, 42-52, 59, 64, 67, 72, 93, 97, 111, 113, 115, 120
  - Board of Trade, 46, 54
  - Canal, 44
  - Clearing House, 45
  - Coal, 52
  - Dangerous Goods, 52, 56
  - General Railway—*See under* General Railway Classification
  - new commodities, 49
  - passenger train traffic, 52, 56
  - price and value of goods and, 49/50
  - weight density, 220
  - See also* Consolidated Classification
- Classification and Class Rate Cases No.*, 28,300 and 28,310, 262 I.C.C. 477, 191-4n, 220n, 226n,
  - Ultimate Findings, 226
- clearing of traffic—*see* traffic, clearing of
  - coal, 56, 110, 124, 126
  - coal, coke and patent fuel, 52
  - coal, minerals and heavy merchandise, 19, 108, 111
  - coastwise shipping, 19, 20, 86

- collection and delivery, hours of, 116
  - See also under rate and service*
- Commerce, Chambers of, 137, 139, 179
- Commercial Motor, 96n
- company's risk—*See under risk, company's*
- compensation, 118—*See also under insurance*
- competition, 22, 23, 72, 91, 111, 141, 179, 182
  - between hauliers, 26, 95/6, 163/4, 215/6
  - road and rail, 19, 56, 93, 108, 110, 121, 133, 143, 156, 191, 207/8, 228, 232, 242
  - margin of, 103
  - railways 229
  - real source of railways' disabilities, 132-142
  - U.S. compared with U.K., 223
  - traders, 73, 78, 139-141
- imperfect, 107
- road, 72/3, 83, 90, 107-123, 124, 126/7, 176/7, 182
  - unfairness of, 114/5
- wasteful, 154/5
- consignments, 21, 91, 93, 98, 100, 105, 172
  - large, 67, 72, 100/101, 112-115
    - saving in costs of carriage, 50/51, 176
    - See also under charges of road carriers and rates, railway*
  - loss of, 120, 157
  - minimum, 88
  - small, 99/100, 113/4
    - See also under Smalls*
  - unusual or difficult, sent by rail, 175
- Consolidated Classification (U.S.), 190, 193
- Consolidation of Railroads Case*, 159 I.C.C. 522, 204
- containers, 89, 117/8
- convenience, public, 159
  - See also under licence, carriers', and need, public, for transport services*
- conveyance, charge for, 56, 66, 74, 84
- Co-ordination of Road and Rail Freight Transport, 1946, 234/5, 246
- costs, handling, 50/51, 101
  - by rail, 51, 54, 82, 92, 111/2, 114, 182
  - by road, 95-98, 104, 107/8, 110-115, 121, 162, 176
- Cox and G.W. Rly. Co.* (26), 153
- damage, 50, 64, 98, 117, 118
- dangerous goods, 64
- Dangerous Goods Classification, 52, 56
- Dayton-Goose Creek R.R., 202
- demand, elasticity of, 162
- demurrage, 119
- Denaby Main and M.S.L. Rly. Co.*, 79n
- depression 1929, 205
  - railroads and, 204, 209
  - national income in U.S. and U.K., 205
- discrimination, 36-42, 81, 113, 139/140, 177
- disintegration of rate—*See rates, railway, disintegration of*
- distribution, local, 114, 121
  - wide, 114, 123, 134, 173
- division of function—*See function, economic, between road and rail*
- drivers, 103/4, 153

- Eastman, Commissioner, 204/5, 209  
*Edwards, John, and L.M.S. Rly. Co. & Others* (10), 149 ; (38), 158 ; (40), 159  
 Emergency Railroad Transportation Act, 1933 (U.S.), 202, 209  
*Easton & Co. and L.M.S. Rly. Co.* (10), 149 ; (38), 158 ; (41), 159  
 enterprise in road transport, 158-160, 163/4  
 Equality Clause—*See* Railway Clauses Act, 1845  
*Ex-Army Transport and Diamond* (27), 154  
 exceptional rates, 55, 67-75, 83/4, 86, 89, 91-93, 110-112, 131, 132/3, 176, 181, 225  
 Exchequer—*See* Treasury  
 exports—*See under* traffic  
  
 facilities, transport, convenient for public, 159  
     suitable, 147, 151, 154, 156-158, 161  
     in excess of requirements, 154-157, 161  
     *See also under* licence, carrier's  
 Federal Co-ordinator, 206/7, 210, 221f  
 Federal Government, powers of, 187, 189, 197, 202  
 Federal Works Agency, 185  
 Federation of British Industries, 48  
*Fifteen Per Cent. Case*, 226 I.C.C. 41, 194  
 Finance Act, 1933, 143  
 flat rates—*See* agreed charges  
*Forrester, John & Patricia, and G.W. Rly. Co.* (34), 157 ; (36), 158 ; (43), 159  
*Four Amalgamated Rly. Cos. and Bouts-Tillotson*, (1), (2), 147 ; (4), (6), 148 ; (15), 151 ;  
     (31), 155 ; (44), 161 ; (47), 163 ;  
     (48), 163  
     *T. W. Foster*, (13), 150 ; (24), 153 ; (33), 157  
 freight clearing houses, 105, 106, 174  
     *See also under* Traffic  
 function, division of, between road and rail, 21, 112-115  
     *See also under* Traffic  
  
 general merchandise, 19, 97, 99  
 General Merchandise, Classes, 7-21, 110/111, 124, 126/7, 129/130  
 General Railway Classification of Merchandise (G.R.C.), 42, 46, 48, 56, 64, 94, 108,  
     124, 224  
 Glamorgan Canal, 44  
 good-will, 26, 38, 83, 95/6, 133, 139, 153  
 Gravesend Canal, 45  
 Great Western Railway, 82, 148  
*G.W. Rly. Co. and Chamber of Shipping of U.K.*, 70  
*G.W. & L.M.S. Rly. Cos. and Smart* (2), (3), 147 ; (5), 148 ; (13), 150 ; (31), 155 ;  
     (32), (33), 157 ; (39), 159  
*G.W. Rly. Co. & Others and Bristol Corporation*, 69  
*G.W. Rly. Co. v. Bristol Grain Importers' Defence Association* (Robinson Case), 82-85  
  
 handling, 117  
*Hargreaves and L.M.S. Rly. Co.* (18), (20), (22), 152 ; (48), 163  
 Harlan, Mr. Justice, 200  
 haul, average length of, 19, 91, 126, 130  
 hauliers, commercial advantages of small size, 134, 177, 179/180, 182  
     large, 95, 105  
     large numbers of, 23-26  
     size of, 94, 95, 102, 120, 163, 173/4, 179, 182, 226  
     *See also under* carriers.

*Hawker, H. W., and G.W. & L.M.S. Rly. Cos.*, (13), 150 ; (24), 153 ; (39), 159 ; (40),  
159

*Hawker, H. W., and G.W. & L.M.S. Rly. Cos. (No. 2)* (8), 148 ; (9), 149 ; (33), 157  
highways, allocation of cost between users, 34/5, 143

classified, 28, 32, 34

expenditure upon, 28-31, 32/3

hours of work, 27, 99, 145

*Hughes' Appeal*, (11), 150

Import Duties Acts, Enquiries, 1933, 1934, 124

Imports Retained, 124

inconvenience to traders—*see under* licence, carrier's, *and under* traders

*Increased Railway Rates, Fares and Charges*, 1942, 248 I.C.C. 545, 221

industrial location, 73

insurance, 63/4, 95, 118

*See also under* compensation

inter-state commerce 185/7, 222

Inter-state Commerce Act, 187-190, 209

Inter-state Commerce Commission, 186, 187-194, 199-205, 208-226, 223/9

intra-state commerce, 187, 195, 197, 222

rates, 189, 222

Inventory, Truck and Bus, 1941 (U.S.), 185

invoicing, 119

*J. & E. Transport Ltd. and L.M.S. Rly. Co.* (36), 158

*Joel, Barnett, and L.N.E. Rly. Co.* (18), 152 ; (48), 163

*Jones, Henry, and L.M.S. Rly. Co. & Others* (12), 150

Kahn-Freund, 64n

La Follette, Senator Robert, 201

*Leslie and L.M.S. & L.N.E. Rly. Cos.* (27), 154

*Lewis and Southern Rly. Co.* (3), 147

Liaison Committee, 234

licence, carrier's, 92, 134, 141, 143-165

application for, 147-154

base year, 158, 159, 160

claimed, 146, 159/160

evidence required for, 148-152, 157

first issue of, 145

issue of, 143-165

lower rate no justification for, 160-162, 165

refusal of, 158-160

renewal of, 151, 154, 163

transfer by sale, 153

validity of, 144, 151, 163

Licensing Authority, 27, 92, 143-165, 214-216

discretion of, 146, 155, 239

power to require returns, 145, 156

*L.M.S. Rly. Co. and Anton* (3), 147

*and A. P. & L. Ingleby* (3), 147 ; (32), 157 ; (44), 161

*and Barr* (24), 153

*and Botterill & Sons* (7), 148

*and Mitchell* (3), 147

*and Tait & MacConn* (11), 150 ; (38), 158 ; (40), 159

*L.M. S. & G.W. Rly. Cos. and McNamara* (1921) *Ltd.* (24), 153

- L.M.S. & L.N.E. Rly. Cos. and Beazley* (14), 150
  - and Buton* (8), 148 ; (46), 161
  - and Collier Daniels Transport* (32), 157
  - and J. T. Dunnett* (2), 147 ; (31), 155
  - and J. & H. Richards* (34), 157
  - and Sheville* (26), 153
  - and Smalley* (26), 153
  - and Smalley (No. 2)* (26), 153
  - and Stevenson Transport* (9), 149 ; (44), 161
  - and Stuart* (18), 152
  - and Williams* (12), 150
- L.M.S. Rly. & Others and Motor Carriers, Ltd.* (14), 150 ; (36), 158
- L.N.E. Rly. Co.*, 59
- L.N.E. Rly. Co. and Allen* (8), 148
  - and B. & C. L. Transporters, Ltd.* (17), 151
  - and Blyth Transport Ltd.* (17), 151
  - and Briggs* (24), 153
  - and Brownbridge* (24), 153 ; (36), 158
  - and Hurd : Newham's Ltd. and Hurd* (10), 149 ; (23), 152 ; (41), 159
  - and Robson* (14), 150
  - and Sanderson & Others* (28), 154
- L.N.W. Rly. Amalgamation Act*, 1846, 45
- loads, car-, 19
  - full, 109, 112, 172
  - return, 101, 102, 103, 111-114, 126, 153
  - train, 21, 72
- See also under* back-loading, *and under* running, empty
- London Passenger Transport Board, 21
- lorries—*See under* motor vehicles
- L. & Y. Rly. and East Lancashire Rly. Amalgamation Act*, 1859, 45
- MacLachlan and Morgan* (12), 150
- market, common, 80/81
- mass production plants, 101, 117
- Mauve Pamphlet, 75
- maximum rates—*See under* rates, railway
- McKenna, Mr. Justice, 188
- merchandise, cheap—*See under* merchandise, low-classed
  - general—*See under* general merchandise
  - high-classed, 108, 113, 114, 130/131, 133
    - See also under* General Merchandise, Classes 7-21
  - low-classed, 108, 110, 130/131
    - See also under* Minerals and Heavy Merchandise, Classes 1-6
  - valuable—*See under* merchandise, high-classed
  - value of, 49, 107/8, 111, 115, 124, 176
- mileage rate, 81n, 111, 176
  - See also under* rates, railway
- Miller and L.M.S. Rly. Co. & Others* (3), 147
- Minerals and Heavy Merchandise Classes, 1-6, 110, 124, 126, 129, 130
- Mines Department, 124
- Ministry of Transport Act, 1919, 47
- Minnesota Rate Cases*, 1913, 230 U.S. 352, 188
- Modern Haulage Services Ltd., and L.M.S. & L.N.E. Rly. Cos.* (17), 151 ; (20)-(23), 152 ; (48), 163
- monopoly, 23, 26, 39, 110
- Moss Brothers and Southern Rly. Co.* (25), 153 ; (41), 159
- Motor Bus and Motor Truck Operation* 140 I.C.C. 685, 196n, 197n
- Motor Carrier Act*, 1935, (U.S.) 210-212, 214, 216

*Motor Carrier Rates in Central Territory* 8 M.C.C. 233, 209, 217, 220/1, 224  
*Motor Carrier Rates in New England* 8 M.C.C. 287, 217-225, 252  
*Motor Carrier Rates in Trunk Line Territory* 24 M.C.C. 501, 217-222, 251-253  
 Motor Freight Bureaux and Conferences, 216, 222/3  
 motor transport in war, 229

restriction of, 30, 91, 134, 141, 144, 154-165  
 technical progress in, 162

motor vehicles, hired, 152, 230  
 commercial, proportion to passenger, 34  
 mechanical fitness of, 27  
 number competing with rail, 23, 26, 237  
 registration duty, 29, 30, 134

National Industrial Recovery Administration, 209

National Motor Freight Classification, 217-219

nationalisation, case for, 244

need, public—*See under* public need

*Newbury & District Motor Services and Perry* (12), 150

and *Stephen & Hewitt* (10), 149 ; (23), 152

non-competitive stations, 65

*Norman and G.W. Rly. Co.* (28), 154

Nottingham Chamber of Commerce, 106

Nova Scotia, survey of transportation, 35n, 223n, 224n

objectors—*See under* Road and Rail Traffic Act, 1933

obligation to carry, statutory, 182

offered charges, 92/3

*Orange and Jennings* (12), 150

*O'Sullivan and G.W. Rly. Co.* (18), 152 ; (20), 152 ; (48), 163

owner-drivers, 102-105

owner's risk—*See under* risk

owner's wagons—*See under* wagons

*Oxlade and G.W. Rly. Co.* (15), 151 ; (19), 152 ; (47), 163

packing, 51, 117, 118

saving in cost by road, 118

parcel post, 89

parcels, carriage of, by road, 100, 159, 174n

passenger fares, 40

passenger train traffic, 56, 113

Peak Forest Canal, 45

*Petrie and G.W. Rly. Co.* (12), 150 ; (34), 157 ; (36), 158

petrol, consumption of, 34n

tax, 29, 30, 32, 162

*Pickering Phipps v. L.N.W. Rly. Co.*, 79n

Pigou, Prof., 26

pillfering, 120

Porter, "Progress of Nation," 29

*Power and L.M.S. Rly. Co.* (46), 161

preference, undue—*See under* undue preference

price, discrimination of, 37-42, 139/140

price leadership, 96

Prince Plan, 209n

Private Acts, 45

Production, Census of, 124

public convenience and necessity, 213/4

public interest, 81, 146, 154/5, 157, 162



- public need, 147, 149, 151/2, 156/7, 160, 162
- Public Roads Administration, 185
- publication, 94, 134, 136, 139/140, 177, 180, 196, 212, 240
- punctuality, 100/101, 116/117, 157
  
- railroads (U.S.), Class I, 185, 206
  - consolidation of, 199, 203-205, 209
  - earnings, 129/130, 205
  - excess earnings, recovery of, 202
  - fair return, 200, 202, 206
  - fair value, 202
  - Federal v. state authority over, 188
  - financial condition of, 199, 229
  - mergers, 204
  - passenger competition, 203
  - return to private ownership, 199
  - statistics, 184
  - valuation, 200/201
  - volume of traffic, 223
- Railway and Canal Commission, 23, 54, 77, 79, 173, 240
- Railway and Canal Traffic Act, 1854, 79/7, 134, 178, 187
  - 1873, 54
  - 1884, 23, 46, 54, 75-77, 80, 134, 178
  - 1913, 55
- Railway General Managers' Conference, 234
- Railway Clauses Act, 1845, 75, 77, 85
- Railway Clearing House, 45, 90, 180, 199
- railway companies, 21, 26, 45, 181, 227, 231
  - disadvantages of great size, 134, 139/140, 177, 179, 181
  - objectors—*See under* Road and Rail Traffic Act, 1933
  - powers to raise rates, 54
    - to reduce rates, 67-74, 176
    - limitation of, not exclusively legal, 176
  - road carriers, 154
  - size of, 120, 134, 139/140, 177-183
  - source of competitive disabilities, 173, 176, 180
  - statutory carriers, 181
  - See also* railroads (U.S.)
- Railway Companies Association, 47
- Railway Executive Committee, 230
- Railway Rates Advisory Committee, 36, 47-49, 51/2, 54, 67, 74/5
- Railway Rates and Charges Order Confirmation Acts, 1892-94, 46, 52/4, 67, 72, 75
- Railway Rates Tribunal, 53, 55, 63, 68-72, 75, 82-85, 89, 132/3, 136, 240
  - consent of, to reduced rates, 133, 176, 180
  - control by, no impediment to rate reduction, 69-72, 132/3
  - 176/7, 180
  - Ninth Annual Review of Standard Charges*, 70n
- Railway Returns, annual, 66, 127
- Railway Road Transport Acts, 1928, 154
- Railways Act, 1921, 21, 48, 52-56, 59, 64, 67-69, 72/3, 75, 82-85, 89, 92, 107, 111, 113, 133, 136, 176/7, 227/8, 247
- railways, regulation of, 22/3, 26, 67, 176/7
- rate-book, railway, 22, 45, 94, 137, 181
- rate-cutting—*See under* under-cutting
- rate-making, railway (U.K.), 83, 85, 97, 107, 176
  - disregards costs, 112-115, 176
- rate-making, railroad (U.S.), zones, 191, 194
- Rates Advisory Committee, 227, 247

- rates, economical—*See under* rates, remunerative  
 exceptional railway—*See under* exceptional rates  
 motor carriers (U.S.), comparison British road charges, 221-223  
     little uniformity, 223  
     maximum suggested, 1943, 222  
     minimum, 209  
     motor freight classification, 218/9  
     undue preference, 223  
     unremunerative, 217  
     unstable, 215  
 railroad (U.S.), Central and Trunk Line Territory, 220, 223  
     class rates, 193  
     classifications, 190, 193/4, 193n  
     commodity, 221  
     increases sought 1933 and 1942, 221  
     New England, 220  
     Official Territory, 192/3  
     reasonable, 191  
     regulation of, 187  
     single scale of, 193/4  
     undue preference, 191, 194  
     unjust discrimination, 189, 191/2  
     unreasonable, 193  
     variation between districts, 192  
 railway (U.K.), 52-73, 82-93, 97, 130  
     annual review of, 55/6  
     collected and delivered, 55/6, 70  
     concessions to traders without legal claims, 137, 139/140, 177  
     disintegration of, 63, 74/5, 84, 85  
     five per cent increase, 70  
     impediments to reduction, 134-142, 179, 181  
     increases of, 55/6  
     inflexibility of, 51/2  
     maintained despite competition, 133/4  
     maximum, 27, 45, 54/5, 67  
     rebates for large consignments, 47, 113  
     reduction of, 72, 129-142, 176/7  
         limits of companies' discretion, 63/3, 83, 132/3  
     regulation, 53/4  
     relation to costs, 113-115, 176  
         (*See also under* costs of carriage by rail)  
     relativity of, 137/8, 179  
     station to station, 63  
     through, 181  
     uniform mileage scale, 81n, 111, 176  
 remunerative, 96, 103, 217-221,  
 standard railway—*See under* Standard rates  
 unremunerative, 27, 104, 150, 160, 208, 217  
*See also* charges of road carriers (U.K.)  
*Rates over Freight Forwarders Inc.* 4 M.C.C. 68, 217  
 receipt per ton, average, 127  
     per ton-mile, average, 130  
 re-classification, 52, 176  
 registration duty, motor—*See under* vehicles  
 reputation—*See under* good-will  
 return loads—*See under* loads  
 revenue, net railway, 55, 69, 71, 127, 132, 140, 228, 232  
     *See also under* Standard net railway revenue  
*Rhodes, John, and L.M.S. Rly. Co.* (12), 150 ; (36), (37), 158 ; (41), 159  
*Ridgewell & Co. and Southern Rly. Co.* (13), 150 ; (33), 157

- Ripley, Professor W. Z., 203
- risk, company's, 63/4, 89
- risk of damage—*See under* damage
- risk, owner's, 63/4
- Road and Rail Conference, 234
- Road and Rail Traffic Act, 1933, 27, 55, 82, 86-88, 99, 132, 143-147, 155/6, 159/160, 162/3, 214, 239
- Road and Rail Traffic Appeal Tribunal, 143-165, 214, 240
- road charges—*See under* charges, by road
- Road Fund, 28
- Road Haulage Organisation, 106n, 230, 234, 245
- Road Haulage Wages Act, 27, 146
- Road Improvement Fund, 29
- Road Traffic Act, 1930, 143, 145
- Road Traffic Act, 1937, 144
- road transport—*See under* motor transport
- roads (U.S.), state systems, 185
  - statistics, 185
  - See also* highways (U.K.)
- Robinson Case*, 82-85
- Robinson, Mrs. Joan, 26
- Roosevelt, President, 209, 250
- running, empty, 101/2, 173
  - See also under* back-loading
- St. Louis and O'Fallon, R. R., 202
- Salter Conference, 27, 30, 85, 143, 232
- Scrutton, L. J., 84, 225
- secrecy, 26
  - among road hauliers, 94/5
  - of railway rates, 79
- service, collection and delivery, 116, 172
  - by rail, 59, 81, 154
  - by road, 99/100, 103, 117, 154
- railway, 115-120, 133, 155
- road, 94, 96, 99/100, 115-120, 127, 140, 149, 155, 158, 162, 165
- services, road, wasteful and unnecessary, 160
  - through by road, 120, 173/4
- Shepherd, Henry & Elsie, and L.M.S. Rly. Co.* (9), 149 ; (25), 153 ; (36), 158 ; (42), 159
- Shreveport Case*, 234 U.S. 324, 188
- sidings, private, 66, 74, 117/8
- size—*See under* carriers, railway companies, and undertakings
- "Smalls," 113/4
- Smart, 146
- Smith and L.M.S. Rly. Co.* (11), 150 ; (38), 158
- Smyth v. Ames* 169 U.S. 466, 200
- Southern Railway, 65
- Southern Rly. Co. and Lambert* (26), 153
- Southern Rly. Co. and Owen* (9), 149 ; (34), 157
- Special Areas, 232
- speed limit, 30
- Square Deal, 233/4, 248
- Standard Charges, Schedule of, 53, 56, 72, 110/1
  - Basis of Scale, 63, 74
- standard net railway revenue, 55/6, 68, 71, 83, 111, 127, 227/8
- Standard rate, 42, 52-66, 67/8, 72, 74, 82-85, 89-91, 111/2, 132, 181, 227
  - Class 7, 111
  - schedule, 225

- state commissions, 192, 197
- state highways safety code, 198, 210
- Stephenson and Sagar* (11), 150
- sub-contractors, 105/6, 119, 153, 174
  
- taxation, motor, 115
  - receipts of, 30, 33, 34, 185
- terminals, charge for, 59, 66, 74, 84
- terms and conditions of carriage, standard, 63, 88
- Thornley and L.M.S. Rly. Co.* (36), 158
- tonnage, canal, 19, 127
  - coastwise, 127
  - index of, 127
- Traders' Coordinating Committee, 48
- traders, interests of, 85, 120
- traders, lack of suitable facilities for, 148, 149, 157, 158, 165
  - See also under* licence, carrier's
- traffic, abstracted from other carriers, 148, 149, 157, 158, 165
  - balanced, 172
  - bulky, 50, 97/8, 107/8
  - clearing of, 102/3, 173, 182, 245
    - railway, 182
- Traffic Commissioners, 143
- traffic, cream of, 114
  - cotton, 136
  - delay to, 119/120, 157
  - dense, 111/2
  - exchange of, between hauliers, 173, 182
  - export, 89, 117
  - false, 150, 161
  - guaranteed minimum of, 72, 79/80
  - high-classed and high-rated—*See under* merchandise
  - in bulk, 21, 114
  - irregular—*See* traffic, light
  - large—*See* traffic, dense
  - light, 111/2
  - lost to road, 127, 129, 135, 162/3
  - low-classed and low rated—*See under* merchandise
  - new, 159, 163
  - railway, 20, 124, 126
  - railway, and output, 127
    - proportion at exceptional rates, 68, 87, 131, 191
    - share of, 182—*See also under* function, division of
  - regular—*See under* traffic, dense
  - remunerative, 115
  - retained by railway, 126
  - returns of, 87, 126
  - road, 20, 126/7, 135
    - records of, 145, 155/6, 207
  - urgent, 116
  - U.S., 223
    - volume of, 20, 102, 124-129, 132, 135
- train loads—*See under* loads
- transshipment, 20, 99, 117
- Transport Advisory Council, 144, 232-235
  - Service and Rates Report, 235
- Transport Bill, 237-249
  - debate, 242, 248
  - draft scheme of charges, 240

- Executives, 238
  - Minister's rights of direction, 240
  - transfer of ownership, 241
- Transport Commission, 237
- transport, demand for, 127, 155-159, 161-163, 165
  - Minister of, 47, 68/9, 83, 143/4
  - Ministry of, 24n, 28, 32, 47, 87, 232
  - Ministry of War, 230, 237
  - road, meagre information about, 156
  - (U.S.), 186
    - competition, 220
    - road, state jurisdiction over, 195
- Transport, Royal Commission on, 143, 252
- transport, technical progress in, 162/3, 165
  - two prices for, 139-142
- Transport Tribunal, 239, 249
- Transportation Act (U.S.), 1920, 188, 199/200, 203, 206
- Treasury, 28
- Trunk Roads Act, 1936, 28
  
- undercutting, 96, 104, 208, 215/216
- undertakings, size of, 172-175, 177, 179, 181
- undue preference, 66/7, 70, 72, 75-81, 93, 134-6, 139/140, 177-9, 221, 248c
- uneconomical rates—*See under* rates, unremunerative
- unequal treatment, 23
- United States of America, 19, 22, 27, 173/4
  - Congress, 187, 192, 197, 200, 210, 214, 229
  - Constitution of, 187
  - size of, 184, 186
  - Supreme Court, 187/8, 194/5, 200, 214
  
- Valuation Act (U.S.), 1913, 200
- value of goods—*See* merchandise, value of
- vehicles, motor—*See under* motor vehicles
  
- wages, 55, 114/5
  - fair, 145
- wagon hire, 59
  - space, 50
- wagons, owners', 59, 63
  - private ownership of, 173, 238
- War, 1939-1945, 229-231
  - traffic during, 230/1
  - See also* Statistical Appendix
- Wasey and Borwick & Others* (27), 154
- Watts & Others and L.M.S. & L.N.E. Ry. Cos.* (30), 154
- "weak" roads, 198, 228
- Woodlock, Commissioner, 197n
- Woolworths, 88, 92